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MUNICIPAL OWNERSHIP

AND OPERATION

OF

PUBLIC UTILITIES

IN

NEW YORK CITY

BY

SAMUEL SEABURY,

One of the Justices of the City Court of the City of New York.

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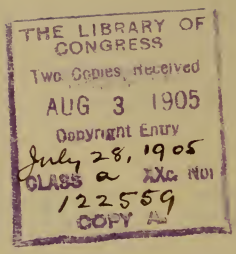

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MUNICIPAL OWNERSHIP AND OPERATION OF PUBLIC UTILITIES IN NEW YORK CITY.

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PREFACE.

The purpose of this pamphlet is to describe the nature and extent of some of the public franchises owned in the streets of New York City by private corporations, to point out the abuses existing under their present management and to aid in arriving at just conclusions in reference to them. The safety and welfare of all the people of the city are dependent upon the manner in which its lighting and street railroad franchises are managed and operated. The majority of citizens are more interested in securing a satisfactory administration of these services than they are in a discussion of the theoretical advantages of public over private operation. Questions in relation to the lighting and street railway franchises are complicated by reason of the fact that the public possess very little accurate information in reference to them, and their legal and technical aspects are such as to deter laymen from making a thorough investigation. Without a clear knowledge as to the nature and extent of these franchises and their legal status many prudently hesitate to advocate a change in our economic policy in reference to them. The purpose which I have tried to accomplish in these pages is to state the true facts in reference to these franchises. Having done this I have considered some of the alleged remedies which have been proposed for present abuses. Having shown the inadequacy of the remedies suggested, I have endeavored to explain the remedy which I conceive to be the true one. Nothing short of the ownership and operation of these public utilities by

the municipality can remedy the existing evils. The question of the acquirement and operation by the city of the lighting and street railroad franchises is a great business problem and is not free from difficulty. It is a question, however, which must be solved and the longer we postpone the attempt to solve it the more difficult and complicated will it become. It is a subject which is entitled to the calm and impartial consideration of every citizen. It must not be approached in any narrow spirit of partisanship. A candid examination of the facts and the arguments for and against municipal ownership must precede proper action upon the subject. Records and law-books must be consulted to ascertain the nature and origin of the privileges which private corporations now claim the right to exercise in our public streets. Political and economic considerations must be weighed in determining whether municipal ownership and operation of these public utilities is to be preferred over private ownership and operation, and, lastly, the legal methods by which such franchises may be acquired and operated must be considered and the effect of such ownership and operation upon the city's finances and credit must be determined. Nothing can be gained toward promoting the success of the movement by demagogic appeals to passions and prejudices. Nor does the cause of municipal ownership and operation need to depend upon such appeals. It is essentially a business matter, the advantages of which are capable of being demonstrated to hard-headed business men. Until these various aspects of the question are appreciated and a clear cut and practical plan proposed by which their acquirement and operation can be secured, there is

little probability or hope of the adoption of municipal ownership and operation. When such a practical plan is devised and the question thoroughly understood, the People will take the political action through which alone they can recover their own franchises and derive the benefits which will accrue from their public ownership and operation. To aid in bringing about a clearer understanding of this question in its relation to the City of New York and to hasten the establishment of municipal ownership and operation of its public utilities is the purpose of the following discussion.

In preparing this pamphlet I have availed myself freely of the following volumes: "The City for the People," by Prof. Parsons; "Municipal Monopolies," edited by Prof. Bemis; "The History of Public Franchises of New York City," by Mr. Gustavus Myers, and the excellent bulletins in relation to rapid transit prepared and published by the Municipal Art Society of New York.

July 1st, 1905.
New York City.

CHAPTER I.

Public Franchises.

Definitions and Nature.

Government ownership and operation of public utilities relates to the performance of those services which in their nature are natural monopolies and which can only be rendered by private corporations when a franchise has been granted from the government to the corporation performing them. At the outset it is necessary clearly to understand what a franchise is. A franchise is a special privilege conferred by the government on individuals or corporations, and which does not belong to citizens of the country generally by common right. (Smith vs. The Mayor, 68 N. Y., 552, 555.)

A distinction exists between the franchise of the right to be a corporation and the other franchises which are conferred by the sovereign power upon corporations. The right to be a corporation is itself a separate, distinct and independent franchise, complete within itself, and a corporation having been created, enjoying this franchise, may receive a grant of other distinct and independent franchises. These latter franchises are no part of the essential franchise of the right to be a corporation, but are given to the corporation in addition. The franchise of the right to be a corporation is a franchise which all corporations enjoy and will not be discussed in these pages. Those franchises which permit corporations to perform certain public services, are called public franchises.

Public franchises are those which are conferred upon

individuals or corporations in addition to the original franchise of the right to be a corporation giving to the grantee of the franchise the right to run cars, to collect fares, to appropriate earth for the bed of a railroad, to lay rails, pipes, mains, conduits and tanks, or permission to exercise the right of eminent domain or enjoy a right of way through streets or highways, or to perform some quasi-public service.

Those corporations which are charged with the performance of some quasi-public duty, for the discharge of which the use of public thoroughfares is essential, possess public franchises.

Manifestly there is a perfectly clear and evident distinction between the attempt of the government to regulate the business of an individual or private corporation, possessing no public franchise and being under no quasi-public duty, and the attempt to regulate the manner in which public franchises are operated and public duties are performed. The movement for municipal ownership and operation of public utilities relates only to PUBLIC FRANCHISES and does not, therefore, involve the slightest interference with private business or private rights.

History of Franchises.

The creation of corporations enjoying franchise privileges was known to and sanctioned by the laws of Greece and Rome. In early English law the right to grant corporate powers or other franchises was the prerogative of the sovereign. At first royal prerogative was unrestrained, but with the growth of the power of Parliament, restrictions and limitations were imposed upon it.

In America in Colonial times both the Dutch and English governments guarded jealously the right to confer franchises on natural persons or corporations. In the early history of the United States the legislatures of the several States possessed the power and had the right to grant charters of incorporation or other franchises. These corporate and franchise rights were usually granted by special act of the legislature.

The Dartmouth College case decided that these corporate and franchise grants were contracts, and were within the protection of the provisions of the federal constitution, which prohibits the State from passing laws which impair the obligations of a contract. The case went further and held that those grants made by the English government prior to the Revolution were within the protection of these constitutional provisions.

State constitutional provisions very generally restrict legislative bodies to granting corporate powers and franchises only under general laws. Municipal corporations or cities usually by virtue of their interest in the streets and public highways, possess the right to grant certain public franchises and to regulate and control their operation. The franchises granted by municipal corporations are restricted not only within the limits of the municipal charter, but are further restricted by the terms of the franchise grant from the municipality. The importance of these municipal franchises has greatly increased with the growth and development of our modern city life. At first these franchises were usually granted to individuals. Later many private corporations were organized for the purpose of operating and enjoying the profit arising from their ownership and operation.

The following table shows the dates when corporations were organized for operating the most important of these franchises in the older States:

STATES	Water Co's.	Gas Co's.	Railway Co's.	Telegraph Co's.
Alabama	1820	1854	1858	1848
Connecticut	1849	1857	1859	1837
Delaware	1804	1835	1859	
Louisiana	1833			
Massachusetts	1795	1822	1853	1846
Maine		1849	1860	
Mississippi	1819			
New Jersey	1799			
Ohio	1810	1837		1849
South Carolina		1846	1860	
Tennessee	1809	1849		
Virginia	1832		1828	1847
District of Columbia	1814	1848		

Compiled from Foote & Everett's "Law of Incorporated Companies," etc., Vol. 1, pp. 131-134.

The almost invariable steps in the development of public franchises have been, first—individual enjoyment of franchises; second—corporate enjoyment; third—municipal regulation and control; fourth—municipal or public ownership, and fifth—public or municipal operation. The fifth and last stage has not as yet been generally adopted, but it is unquestionably the next step in the evolution of public franchises.

Streets—Their Legal Character.

These public franchises are granted mainly in streets or thoroughfares. It becomes necessary, therefore, to appreciate the legal character of a street or highway. The legal character of all streets and highways is no longer open to discussion. Our modern streets, roads and highways constitute the People's Highway, as at common law they were regarded as belonging to the King. The "King's Highway" is defined in English law to be a public passage for the King and his subjects, and from thence its name is derived; and the test whether a road is entitled to that designation is to inquire whether it be common to all the people.

In the case of Davis v. The Mayor of New York (14 N. Y., 506, 515), Chief Justice Denio said:

"The object of a highway or street is to afford to every citizen an opportunity to pass on foot or with his horses and carriages from one locality to another, and *it is essential to the legal idea of a street that it should be common to all.*"

The same idea was expressed in a case decided in Indiana, where the Court declared that "Public highways belong, from side to side and end to end, to the public." (State v. Berdetta, 73 Ind., 193.) The right to pass upon the surface of the streets, or to pass over the streets upon an elevated structure, or to pass under the streets through subways, are rights in and to the highways. These uses of public streets in no way impair their character as public highways. They serve merely to increase their usefulness and promote their efficiency.

In the Boroughs of Manhattan and the Bronx, in the

territory which was formerly the old City of New York, the city owns the fee of the streets. In the other boroughs, while the city owns the right of way in the highways, it does not own the fee, except where it may have specially acquired it. The abutting owners upon each side of the street own the fee to the centre of the highway. In the construction of subway railroads this distinction is important. When the city itself owns the fee it is not compelled to make compensation to abutting owners, but where the city does not own the fee the subsurface of the street can only be taken upon payment of just compensation to abutting owners.

CHAPTER II.

The Lighting Monopoly.

The interests of the Lighting Monopoly are two-fold: the branch of the monoply which furnishes Gas, and the branch which controls the Electric supply. The origin of the companies controlling both of these branches, and the results of the monopoly which they enjoy are worthy of consideration. From an account of each it will be apparent that their record has been one of extortion. Their privileges were conceived in fraud and political corruption and throughout their existence they have been a constant source of temptation to corrupt officials. Both of these branches exist in violation of the law, as both enjoy absolute monopolies in necessaries of life. Both have violated the law of the State, both have made false reports to avoid the payment of their just taxes, and both have entered into a close and friendly alliance with public officers whose duty required that they should protect the public from extortion.

THE BOROUGHS OF MANHATTAN AND THE BRONX.

The Gas Companies.

Prior to 1880, competition existed among the gas companies of New York City. Since that time the companies have appreciated that monopoly was more profitable to their interests than competition. At present all the gas companies operating in the Boroughs of Manhattan

and The Bronx are controlled by or merged in the Consolidated Gas Company. The monopoly enjoyed by this company is absolute. Most of the very valuable franchises enjoyed by it have been obtained without any consideration being paid to the people. Notwithstanding the fact that their privileges were obtained free of charge, the rates exacted from the consumer by the gas companies have always been excessive and extortionate. As a result of the operation of the Tweed Ring and the contracts made by it for the city, the validity of which was sustained by the courts, public indignation was aroused and a petition was presented to the Board of Assistant Aldermen, asking them to petition the Legislature to confer power upon the city to supply its citizens with gas at cost. This suggestion was referred to a committee and was there smothered. In 1885 the State Senate appointed a Legislative Investigating Committee, which was known as the Thomas Committee. This comittee took a great deal of testimony and disclosed many interesting facts. Their report showed watering of stock, evasion of taxes, enormous profits and extortionate rates charged to the consumer. Down to this time the Gas Companies were furnishing gas to the consumer for $2.50 and $2.25 per thousand, although the investigation of 1885 made it perfectly clear that at least one-half of this price was clear profit to the company.

In 1883 the average price to the consumer was $2.25. In 1885, the year of the investigation, the companies reduced the price to $1.75 and in the following year it was reduced by act of the Legislature to $1.25. This price continued to prevail until 1897, when it was again reduced by law to $1.00 per thousand. The alleged benefits which

the people are supposed to have derived from this reduction have been almost wholly nominal, as poorer gas has been furnished under higher pressure with every nominal reduction in the rate.

It is perfectly evident from these nominal reductions that the price charged for gas bears no relation whatever to the cost of its production.

The report of the Thomas Committee in 1885 did good, however, because it supplied a great deal of information in reference to the dark and crooked ways of the companies. The companies appreciated fully the dangerous character of this report and copies of the report became very scarce. Prof. Bemis says that, "according to the belief of many, the companies bought and burned all the copies on the market and hushed up the report most speedily." (Municipal Gas, p. 70.)

The parent company of all the companies which are now merged in or controlled by the Consolidated Gas Company was the New York Gas Company, which was formed in 1823 with $1,000,000 capital. The Board of Aldermen granted to this company a thirty year exclusive franchise to lay pipes in the streets south of Grand Street. The franchise was given away, as the city received absolutely no compensation. The company charged the consumer $10 per thousand cubic feet for gas. In 1833 the Manhattan Gas Light Company was given a franchise to lay pipes in all streets, avenues and public places north of Grand Street and in part of Canal Street from river to river for twenty years. (Myers' "History of Franchises," p. 93.) No compensation of any kind was paid to the city for this franchise.

From this time on the rich "graft" which these fran-

chises yielded attracted competitors who were anxious to share in the harvest. From time to time the Harlem Gas Light Company, the Metropolitan Gas Light Company, the New York Gas Light Company, the Anthracite Gas Lighting and Heating Company and the Union Gas Light Company obtained franchises or sold those which they had to others. Thus the New York Anthracite Gas Lighting and Heating Company did not develop or operate its franchises for eight years. Having obtained them it held them to sell at a profit and in 1871 it sold its franchises to the Union Gas Light Company, (Myers' "History of Franchises," p. 96.)

It had no lawful right or authority to sell its franchises to the Union Gas Light Company and the latter acquired no valid title. In 1876 the Knickerbocker Gas Light Company came into existence. It acquired its alleged franchise rights by purchase from the owners of the Union Gas Light Company, which had purchased illegally the franchises of the New York Anthracite Gas Lighting and Heating Company. This company paid its president the moderate sum of $500,000 a year salary. (Myers' "History of Franchises," p. 98.) Immediately prior to 1880 the Gas Companies engaged in a bitter war upon one another. It was not long, however, before they realized that their interests would be best promoted by terminating the war and maintaining peaceful relations between themselves and directing all their energies against the community. Up to 1882 no Gas Company had paid a single cent by way of compensation to the city for its franchises. In that year the Equitable Gas Light Company was formed for the purpose of competing with the pool which had been formed

by the other gas companies. In its franchise this company agreed to pay 20 cents for every lineal foot of trench opened for mains and to furnish gas lamps to the city at not more than $112 each a year and to supply gas to city buildings at a rate not to exceed $1.50 per thousand cubic feet and to consumers at not less than $1.75. Operation was commenced in 1884 and in the territory within which the Equitable operated the price of gas was reduced by the other companies to $1.75, but in all other sections of the city the companies kept the price at $2.25. (Myers' "History of Franchises," p. 99.)

In 1884 the Consolidated Gas Company was formed. It was a mere "holding company." It possessed no public franchise, but held the stock of and, therefore, controlled the following named companies: New York, Manhattan, Mutual, Harlem, Metropolitan, Municipal and Knickerbocker Gas Light Companies. It was originally capitalized for $39,078,000, of which $35,430,060 was issued for acquisition of the properties and franchises of the constituent companies, subject to certain indebtedness. The Consolidated Gas Company did not include in its pool the Mutual or the Standard Gas Companies. The Mutual agreed to enter the combination, but was prohibited by a provision in its charter which made its directors liable for a criminal offense if they voted for such combination. The Standard was also prohibited by its charter from consolidating. The Gas Trust represented by the Consolidated Company circumvented the law by buying the stock of these two companies and thus while avoiding responsibility for a criminal violation of the law accomplished its purpose and reaped the benefits that came from violating the law.

The capitalization of the Consolidated has since been raised to $100,000,000, of which $80,000,000 has been issued.

The New Amsterdam Gas Company was formed in 1898 and is a consolidation of the following companies:

Equitable Gas Light Company of New York, incorporated in 1882;

New York and East River Gas Company, incorporated in 1893; and

The New Amsterdam Gas Company, which was incorporated in 1897.

The Equitable Gas Light Company was authorized to operate for thirty years by an ordinance passed December 23d, 1876, unless the permission was sooner revoked for breach of conditions. The ordinance also provided that this company should not assign its rights without the consent of the Mayor, Comptroller and Commissioner of Public Works, or "make or enter into any combination, arrangement or agreement with any other company or companies," and distinctly provided that "in the event of their so doing this permission shall *ipso facto* become null and void."

The New York and East River Gas Company acquired the capital stock of the East River Gas Company of Long Island City, amounting to $1,000,000. The East River Gas Company of Long Island City was incorporated in 1890 and in 1892 was authorized to supply gas and electricity in the City of New York, and for that purpose to lay and maintain conductors, mains and pipes under the streets of the city and under the East River and across any intervening land belonging to the city or to private persons. To carry out its pur-

pose it was empowered to acquire property by condemnation proceedings. Under this act the company built a tunnel under the East River and also under Blackwell's Island. In reference to this company the report of the Stevens Committee says:

"It does not appear that it acquired any rights for the building of its tunnel either by condemnation proceedings or by agreement or purchase."

The original New Amsterdam Gas Company acquired no property prior to its consolidation.

In reference to the franchise of the New Amsterdam Gas Company the report of the Stevens Committee says:

"The New Amsterdam Gas Company claims no franchise in the Boroughs of Manhattan and The Bronx other than that granted to the Equitable Gas Light Company for the term and upon the conditions stated. It is a serious question whether, without the consent of the city authorities, the franchises of the latter company could be transferred by consolidation to the New Amsterdam Gas Company, but, assuming the franchise to have been lawfully transferred, the further question is presented whether the present relations between the New Amsterdam Gas Company and the Consolidated Gas Company do not constitute a breach of the conditions of the franchise rendering it subject to forfeiture.

"The New Amsterdam Gas Company, however, controls the East River Gas Company of Long Island City, which still holds the franchise granted under the Act of 1892."

It is interesting to note that nearly all the shares of stock of the New Amsterdam Gas Company are owned by the Consolidated Gas Company. Thus the Consoli-

dated owns 89,775 preferred shares out of a total of 90,000 preferred shares and 121,095 common shares out of a total of 121,650 common shares of the New Amsterdam Company.

It is exceedingly doubtful if any of the companies owned by the Consolidated possess any franchises at all at the present time. The status of the franchises under which the Consolidated is operating in Manhattan and The Bronx is well summed up in the following extract from the report of the Stevens Committee:

"But it is doubtful whether the Consolidated Gas Company has any extensive rights in the City of New York. It appears that no franchise other than the franchise to be a corporation has been granted to the Consolidated Gas Company, and it would seem that several of the constituent companies have expired or will soon expire. The grant to the New York Gas Light Company was made May 12th, 1823, for twenty years. The grant to the Manhattan Gas Light Company was made May 5th, 1848, for twenty years. The grant to the Metropolitan Gas Light Company was made Dec. 22d, 1858, for thirty years. The grant to the Municipal Gas Light Company under ordinance of December 23d, 1876, apparently will expire in 1907. The grant to the Anthracite Lighting and Heating Company, made September 17th, 1863, and claimed by the Knickerbocker Gas Light Company, apparently will expire in 1913. The grant to the Harlem Gas Light Company, which was incorporated in 1855 for a period of fifty years, was made April 25th, 1855, and contained no time limitation. The city, however, reserved the right "to purchase at any time from the said company all the materials, pipes, fixtures, buildings

and all and singular all the personal and real property owned by said company by paying to said company the cost of the same and ten per cent. over and above said cost.' No evidence has been furnished of any other franchise granted to any other constituent company or claimed by the Consolidated Company. * * * Sufficient facts appear, however, to make it extremely doubtful whether the Consolidated Gas Company has any rights in the streets of considerable value."

The Knickerbocker Gas Light Company possesses merely a receiver's title to the assets of the Union Gas Light Company, which were illegally acquired.

The Astoria Gas Grab, which failed to become a law in 1899, attempted to authorize the Colonial Light, Heat and Power Company to build a tunnel under the East River to connect the waters on Long Island with pipes on the New York side, and to give to the company sixteen acres of land under water at Astoria and to confer many other valuable franchises. Notwithstanding the failure of the Grab Bill to become a law, Mr. Myers has pointed out ("History of Franchises," p. 105) that

"In December, 1899, the State Land Board sold the sixteen acres of land under water at Astoria for $3500, which the Corporation Counsel asserts are worth $3,000,000."

The Electric Companies.

The Edison Electric Illuminating Company obtained the first electric lighting franchise in 1881. It was authorized to lay wires, tubes and conductors for supplying electricity in all the city streets. Under the terms of the franchise it was obligated to pay the city one cent per

lineal foot of the streets occupied. The resolution granting the franchise was vetoed by Mayor Grace upon the ground that the compensation provided for was inadequate, but it was passed over the Mayor's veto. (Myers' "History of Franchises," p. 184.)

Subsequent to this many new companies were formed and franchises were granted to them. These franchises were all acquired by the New York Gas and Electric Light, Heat and Power Company.

In 1901 the New York Edison Company was formed. This company possesses no franchise but is merely a "holding company." It acquired all the rights and privileges of the old Edison Electric Illuminating Company and the New York Gas and Electric Light, Heat and Power Company. The New York Edison Company is to the electric lighting industry what the Consolidated Gas Company is to the gas industry. The capital stock of the New York Edison Company is $45,200,000, which is the aggregate amount of the capital stock of the two constituent companies. This sum represents gross over-capitalization. Bonds were issued by the company until its total outstanding obligations aggregated $40,232,-883.80. Witnesses on behalf of the company before the Stevens Committee endeavored to make it appear that the company owned valuable patents, trade prospects and equities, but when these nebulous assets were analyzed it was found that a majority of its patents had expired and that all of these items did not exceed $3,159,000. Notwithstanding the enormous and fraudulent over-capitalization of the company, its profits were so large that it paid $2,000,000 interest on its inflated bonded debt and accumulated a surplus of $8,000.000. No dividends were

paid upon its stock, nearly all of which, it is interesting to note, is held by the Consolidated Gas Company.

The Consolidated Telegraph and Electrical Subway Company operates ducts for high tension wires and the Empire City Subway Company operates the low tension wire conduits. Both of these last-mentioned companies are owned by the Edison Company, although nominally they keep a separate legal existence. It appeared from the testimony given before the Stevens Committee that the Edison Company pays for building and repairing its ducts under the city streets, pays the taxes of these companies and all their other expenses. Neither of these subway companies have paid the city the amounts due under their contracts and both have been guilty of acts working a forfeiture of their franchises.

The cost of electric current averages about 3.66 cents per kilowatt hour in Manhattan and The Bronx. Add to this all incidental expenses which the company incurs, whether necessary or unnecessary, including the payment of interest upon an inflated debt and dividends on "watered" capitalization, and the total cost would be 6.32 cents. The Edison Company has charged private consumers as high as 15 cents per kilowatt hour for electric current. It has charged, therefore, over 125 per cent. more than the total cost, including all incidental expenses, fraudulent as well as honest. Until recently the city paid at the same rate, but the rate has now been reduced to 12.27 cents per kilowatt hour. The officers of the company admitted before the Stevens Committee, that some of its private customers were furnished at five cents and some as low as three cents per kilowatt hour. The average rate in 1904 was 8.04 cents per kilowatt hour against an

actual cost of 3.66, which covered all expenses except interest upon the funded debt.

For incandescent lamps furnished under a blanket contract, for which other large private consumers would have paid $25,000, it appeared from the testimony of one of the officers of the company before the Stevens Committee that the city had been obliged to or rather did pay $80,000. The proceeds of this "graft" yielded the Lighting Trust at the expense of the city $55,000.00, for which the city got no value at all. It is strange that in view of examples such as these objection is made to public ownership on the ground that it would encourage corruption in our politics.

THE BOROUGH OF BROOKLYN.

The Gas Companies.

In the Borough of Brooklyn, the Brooklyn Union Gas Company holds complete sway. Its monopoly is as complete within its territory as is that of the Consolidated within Manhattan. This company operates under franchises which it claims are practically perpetual. It controls The Woodhaven Gas Light Company, The Flatbush Gas Company, The Newtown Gas Company, The Richmond Hill and Queens County Gas Light Company, and the Jamaica Gas Light Company. The East River Gas Company of Long Island City also claims rights in Brooklyn. This company, as we have seen, is controlled by the New Amsterdam Gas Company.

The Brooklyn Union Gas Company claims its rights under grants made to the original companies. Many of these grants applied only to particular districts and the franchises assigned to it are in terms not assignable.

The report of the Stevens Committee, speaking of this company, says:

"It is a serious question to what extent the Brooklyn Union Gas Company is lawfully exercising rights in the streets of the borough. It is evident that the matter should at an early date be made a matter of judicial inquiry upon proper action taken by the municipal authorities."

Such action should have been taken long ago, and would have been taken under an administration anxious to protect the public against the Gas Trust.

The Electric Companies.

The Edison Electric Illuminating Company of Brooklyn is the only company, except the Flatbush Company, furnishing electric current in the Borough of Brooklyn. It is controlled by the Kings County Electric Light and Power Company.

These companies claim to hold four special franchises originally granted upon specific conditions to the Citizens' Illuminating Company of New York, the Municipal Electric Light Company, the Kings County Electric Light and Power Company, and the Edison Electric Illuminating Company of Brooklyn. The first two of these companies are merged in the Edison Company.

Brooklyn's Electric Lighting monopoly is exercised in practically the same manner as that of the New York Edison Company. The Kings County Electric Light and Power Company owns the stock of the Edison Illuminating Company of Brooklyn, but the latter continues to be the operating company for its own plant and for the other plants which are controlled by the Kings County Electric Light and Power

Company. The Edison Illuminating Company has a lease from the Kings County Company under which the Edison Illuminating Company pays to the Kings County Company all the net earnings of the plant after deducting the payment of interest on the Kings County Company and the Edison Company's bonded debt. Under this lease the Kings County Company received from the Edison Company for the year 1904, $660,500.55. In addition to this amount it received $46,927 as interest on guaranty fund, deposits, etc., and it paid out in dividends $321,508. The Kings County Company pays interest on an alleged bonded debt of $11,950,000 and pays 8 per cent. dividends on $5,000,000 of capital stock. Since 1898 it has acquired a surplus of $1,047,704.68. The assets of the company including all the franchises which it claims to own, are stated by the officers of the company to be worth $15,000,000.

The sum charged by the Kings County Company for electric current until this year was 20 cents per kilowatt hour. On January 1, 1905, the rate was reduced to 15 cents for the first two hours, ten cents for the third and fourth, and seven cents for the fifth and sixth and so on. Current was furnished to special consumers as low as 4 cents per kilowatt hour.

The Kings County Company maintains 4,200 street arc lamps, of which 3,100 are on the arc-head-wire system. The average price per lamp was estimated by an officer of the company before the Stevens Committee as $115.

Deducting depreciation expenses and interest charges, the cost per light, merely for operation, was stated by the company's representative to be $73.

Boroughs of Queens and Richmond.

The Kings County Lighting Company operates in Queens as well as in Brooklyn. The Newtown and Flushing Gas Company operates in Flushing and is merged in the New York and Queens Gas Company. The Queens Borough Gas and Electric Company operates in the Fifth Ward of Queens and in the Town of Hempstead, including the unincorporated villages of Inwood, Cedarhurst, Woodhaven and Lynbrook, and in the incorporated villages of Lawrence and East Rockaway.

The New York and Queens Electric Light and Power Company also operates in the Borough of Queens.

In the Borough of Richmond the New York and Richmond Gas Company and The Richmond Light and Railroad Company both operate.

In reference to the companies operating in the Boroughs of Queens and Richmond the report of the Stevens Committee says: "as is in the case of the other companies the claims of franchises should be subjected to judicial scrutiny, to the end that none of them should be longer allowed to exercise rights in the streets and highways to which they are not lawfully entitled."

The Remsen Bill.

The East River Gas Company claims, as we have seen, to be the owner of the tunnel connecting Queens with Manhattan. Manifestly this tunnel is of enormous value to the trust and is absolutely necessary for it to enable it to carry out its present scheme. The New York and East River Gas Company acquired the franchise and tunnel of the Long Island City Company. This franchise

carries with it the privilege of laying pipe lines under the streets of the Boroughs of Manhattan and The Bronx as well as Queens. To say the least, it is of very doubtful validity. To validate it and to cure all the defects in the franchise was the purpose of the Remsen Gas Bill. If these franchises could be validated, then it would matter little to the Gas Trust that all its other franchises had expired or would soon expire. The Remsen bill attempted to amend the Act of 1892 authorizing the East River Gas Company to supply gas in the City of New York. In one sweeping sentence it provided that

"The East River Gas Company of Long Island City, its successors and assigns, shall also have the right to exercise in the portion of the Borough of Queens, included in the former City of Long Island City, *as well as in the territory hereinbefore expressly included* (viz., all the streets and avenues or public places of the City of New York) all the rights, powers and privileges hereinbefore conferred upon the said company."

This bill in effect sought to revive and extend every right which the old East River Gas Company claimed to own. It prescribed no period of limitation. It was passed by both houses of the Republican Legislature. As it was a bill affecting the interests of the City of New York, it was sent to Mayor McClellan for approval or disapproval. Private citizens and civic organizations devoted to the welfare of the city explained its true character to Mayor McClellan and protested against it becoming a law.

Notwithstanding that its evil character was made perfectly clear, the bill was signed by Mayor McClellan. So far as Mayor McClellan was concerned, he did every-

thing possible to cause this measure to become a law. The veto of Gov. Odell alone saved the City of New York from the enactment into law of the Remsen Bill.

It is no secret that Mr. Charles F. Murphy's influence was responsible for the nomination of Mr. McClellan. In this connection it is interesting to recall that a short time before the Remsen Bill was presented to the Mayor for signature, a contract valued at several hundred thousand dollars was given by the Gas Trust to the New York Contracting and Trucking Company.

The New York Contracting and Trucking Company is controlled by John J. Murphy (the brother of Charles F. Murphy), Mrs. John J. Murphy, Alderman Gaffney.

The contracts which the Gas Trust have made with this company relate principally to work on the new plant at Astoria and aggregate $756,127.64 in amount. The following testimony was elicited from Mr. Gawtry before the Stevens Committee:

"Q. Why did you select that company? A. We looked around and found that they had the most suitable plant.

"Q. Did you know their capital was only $10,000, and that all their equipment was covered by chattel mortgage? A. I did not know it.

"Q. Did you enter into this contract because you knew it would be agreeable to Charles F. Murphy? A. Not at all.

"Q. Will you swear you never said that? A. I do swear it.

"Q. And you never said you gave the contract because you had to? A. I never did.

"Q. Did you know who controlled the company?

A. Probably we were told. I saw the names on the letters.

"Q. Did you know the Murphy of the firm is the brother of Charles F. Murphy? A. Not until the grading contract was let. I saw it in the newspapers.

"Q. And you saw that Mr. Murphy had denied any interest in the firm? A. I heard he said so."

Before leaving the subject of the Remsen Bill it is well to consider the attitude of the present administration toward the East River Gas Company of Long Island City. Under the Act of 1892 conferring franchises upon this company it was provided that this company should pay annually into the treasury of the city three per cent. of its gross receipts "for gas furnished by it to private and public buildings in the City of New York through mains laid by it under the streets or avenues of said city." In reference to this matter the report of the Stevens Committee says:

"Since the consolidation it seems that no serious effort has been made to operate separately the mains in the Borough of Manhattan of the East River Gas Company of Long Island City, and the amount payable to The City of New York under the Act of 1892 has been arbitrarily determined by reference to a percentage of business based upon conditions immediately prior to the consolidation. It seems that a recommendation of the Corporation Counsel, made some years ago, that an action should be brought for the purpose of ascertaining the amount justly payable to the City, has not been acted upon and no steps have been taken to ascertain whether the provisions of the Act of 1892 have been duly complied with. It may also be doubted whether, in the ab-

sence of the condemnation proceedings or of due purchase of the easement, the East River Gas Company of Long Island City is entitled to maintain the tunnel under Blackwell's Island."

Some of the Methods and Practices of the Lighting Trust.

The evils of private ownership and operation become clearly evident when one considers some of the methods and practices to which the Lighting Trust is resorting.

The law requires that all gas furnished by the companies shall be of a certain quality, and this quality is fixed at 22 candle power. The companies have heretofore claimed that the gas which they furnished was of the quality of 25 candle power. Prof. Halleck, of Columbia University, made a thorough examination of the whole matter and gave testimony in relation to it before the Stevens Committee. He found upon examination that the average quality of gas furnished by the Trust was 19 candle power only. He demonstrated beyond all question that the pressure changed at the works many times in a day, and showed that as the pressure increased the quality of gas decreased. The increased pressure allows a greater quantity of gas to be delivered at the burner in order to maintain the required amount of light. The inevitable effect of this practice is that the consumer burns more gas and thus pays more money for it. Thus if $1.00 per thousand cubic foot was paid for 22 candle power gas, and the consumer was furnished only 16.5 candle power, and the additional amount of gas required to make up the 22 candle power was forced through the pipes by means of increased pressure, the consumer would have to pay about $3 to get his full amount of

light. If the consumer required gas of the quality of 19 candle power at present rates he would have to pay between $1.75 and $2 per thousand cubic feet, because so much more gas of inferior quality would be required to produce the same amount of illumination. The company charges at the same rate, but furnishes an inferior quality of gas at a higher pressure, and this practically doubles the amount which the consumer has to pay for his gas. Thus to-day in New York City, although the legal rate is $1 per thousand cubic feet, the consumer practically pays $2. The testimony of Prof. Halleck makes this so clear that a part of it is reproduced here:

"I have been professor of physics at Columbia thirteen years and have given a great deal of attention to the subject of gas. Beginning on March 29 I have made daily examinations of gas taken from the pipes in Fayerweather Hall. I have prepared tables and charts of the variations of pressure and candle power."

These tables show that the candle power varied from 18 to 21, with an average of about 19, with pressure from 2.6 to 3.9 inches.

"I notice, particularly on April 2, 5, 6 and 7, that as the quality of gas increases the pressure decreases and as the quality decreases the pressure increases. By quality I mean the amount of illumination given.

"Q. Can an inferior quality of gas supply a customer with the required amount of light? A. It can, if the flow of gas be permitted to increase.

"Q. And can that extra amount be obtained by increased pressure? A. Yes, it can.

"Q. Did you observe that when an inferior quality is sent through the mains there was an increase of pressure? A. That fact was apparent.

"Q. Did that increased pressure allow a greater quantity to be delivered at the burner to maintain the required amount of light? A. It did.

"Q. What effect upon the consumer has increased pressure with inferior quality? If no regulation is made the consumer burns more gas. For the same illumination he consumes more gas and pays more money?

"A. A certain amount of illumination exists in a cubic foot of gas.. If the quality be good, it produces a high candle power; if the quality be poor, the cubic foot of gas produces a smaller quantity of light. If, however, an inferior quality be forced through the pipes by greater pressure, the candle power at the burner may still be maintained. For example, if you have one cubic foot of good gas, and that be mixed with one-half a cubic foot of air, you get a lower candle power. But if you increase the pressure and force that one and one-half cubic feet of gas and air through the burner in the same space of time required by the one foot of good gas, you get the same amount of illumination. In making these calculations I have taken gas at 22 candle power as the basis, rating that as 100 and figuring my percentages accordingly.

"Q. Now, if gas of 22 candle power is charged at $1 per thousand cubic feet, what would be the cost to the consumer of various inferior grades, sufficient to produce the same illumination? A. Seventy-five per cent. quality or 16.5 candle power would cost, in such a case, $3 in the ordinary open-flame burner and $1.30 in the Welsbach burner, to produce the same amount of illumination as a thousand cubic feet of 22 candle power gas.

"Q. Let us have this clear. If a man paid $1 per

thousand for 22 candle power gas and was furnished only 16.5 candle power, but the additional amount of gas required to make up the 22 candle power was forced through the pipes by increased pressure, would he have to pay $3 to get his full amount of light? A. Yes, approximately that sum.

"Q. If the quality supplied was 19 candle power, what would he have to pay? A. He would pay somewhere between $1.75 and $2 per thousand cubic feet, because so much more gas of inferior quality is required to produce the same amount of illumination. I do not mean that the company's rate of charge is changed, but the consumer would have to pay from $1.75 to $2 for the amount of gas at 19 candle power burned to produce the same illumination that would have obtained from one dollar's worth of 22 candle power gas. I made further tests of the amount consumed in various forms of burners. The ordinary lava-tip burner is rated to consume five cubic feet per hour. On March 29, the tests showed that this burner consumed 9.6 cubic feet per hour in giving 21.8 candle power."

This testimony shows that inferior gas furnished at high pressure is the cause of poor light and big gas bills for the consumer. It also shows that attempts to regulate the price of gas by legal requirement can be and are easily circumvented by the Lighting Trust.

This testimony also explains why so many deaths have resulted in this city from suffocation from gas in recent years. The records of the coroner's office in Manhattan show that during the last year many persons have died from involuntary asphyxiation. When gas is turned down low, and the pressure at the gas works is decreased, the gas is apt to go out altogether, and when the pres-

sure is increased again suffocation is likely to result to the inmate of the room where this happens. Thus it is evident that the criminal practice to which the Lighting Trust has resorted for the purpose of extorting a fraudulent rate from the consumer has caused the loss of many lives.

For a long time the general public have been morally certain that they were grossly overcharged for gas. This moral certainty became a demonstrated fact from the testimony that was given before the Stevens Committee. From the testimony of the officers of the gas companies it was proven that gas could be manufactured for 26 cents a thousand cubic feet and that it could be profitably furnished to the consumer for 32 cents, even if the gas companies added enough to pay interest upon an inflated debt and dividends upon "watered" 'stock. Thus, 32 cents per thousand would yield the trust a handsome profit, but the legal rate is $1 per thousand, and Prof. Halleck's testimony shows that the people actually pay $2 per thousand.

WHY SHOULD EVERY CONSUMER PAY $2 FOR WHAT THE TRUST CAN FURNISH AT A PROFIT FOR 32 CENTS?

This is a question which every consumer of gas would do well to ask himself. There can be but one answer, and that answer suggests that municipal ownership and operation is the only sure and certain way of preventing such robbery in the future.

Although the Lighting Trust owns few, if any, franchises, it operates under franchises which have expired and which are enormously valuable. By the Franchise Tax Law, which was passed during the administration of Governor Roosevelt, these franchises were subject to

taxation. That law has now been upon the statute books for six years, and the litigation to which the Trust has resorted in the effort to have the law declared unconstitutional has just been terminated by the decision of the United States Supreme Court declaring the law to be constitutional.

The Lighting Trust is, also, taxable upon its other properties, and the sworn returns which its officers have made grossly underestimate the properties which the Trust owns.

For purposes of watering its stock, it claims a large value for its properties, but for purposes of taxation its properties suddenly shrink to an exceedingly small amount. The facility with which its thoroughly respectable officers, who stand high in the commercial world, make these conflicting statements and representations, shows an elasticity of conscience upon their part which, if not commendable, is, to say the least, truly remarkable.

In 1902 Mayor Low's administration refused to accept the bids of the gas and electric lighting companies for street lighting.

The refusal was based upon the ground that the bids were not competitive and the prices asked grossly exorbitant. The companies, however, continued to furnish the light. The companies did not institute any suit to recover the amount which they claimed to be due. In December, 1903, the Board of Estimate and Apportionment, upon the report of a committee, of which Comptroller Grout was a member, rejected the bids as unreasonably high. The companies claimed about $3,000,000 for light which they claimed they had furnished the city. Upon this amount they made a claim for $32,000 as interest.

Mr. Oakley made a contract with the companies by which he approved the plan of paying these claims which had been rejected by the Low administration, and which C. F. Lacombe, Engineer of the Department of Water Supply, Gas and Electricity, declared after investigation to be "excessive and erroneous." Mr. Oakley assigned as his reason for making this contract that the companies agreed to waive their claim for interest: though whether the claims could lawfully carry interest was the subject of dispute. The peculiar fact about the whole transaction is that the agreement to waive interest was not contained in the contract. Nor was it set forth in letters which passed between the Commissioner and the companies which purport to bear the same date as the contract. No official other than Mr. Oakley admits knowing of this agreement to waive interest. Both Mayor McClellan and Comptroller Grout deny that they knew anything about it. The question naturally arises as to why the agreement to waive interest was not included in the contract. The payment of this $3,000,000 to the Lighting Trust was prevented by an injunction secured by Mr. William R. Hearst as a taxpayer, and in the disclosure which followed, the plea was made that interest was waived. Commissioner Oakley advanced the plea that interest had been waived as his excuse for making the contract. To say the very least, this method of making contracts with the Lighting Trust is most unbusinesslike. If the injunction secured by Mr. Hearst had not centered public attention on this contract, nothing but the action of Commissioner Oakley or the honesty of the companies could have prevented the payment of the $3,000,000, together with the $32,000 interest to the lighting com-

panies. If the waiver of interest was a part of the contract, why was it not included in the contract? Why was this waiver of interest which was the only consideration for the agreement to pay the company's exorbitant claims, evidenced by no writing, and known to no other official but Commissioner Oakley?

The prices which the Trust charged the city were from 20 to 40 per cent. .higher than are paid in other cities of the United States and Great Britain. Before the Stevens Committee, Mayor McClellan testified that Commissioner Oakley signed the contract without his knowledge. The Mayor said he first heard of Oakley's action from a reporter. In reference to this matter the Mayor gave the following testimony:

"I sent for Oakley and asked for an explanation. He told me there had been a reduction of price of arc lamps and it was the best arrangement that had ever been made, that he had consulted the Comptroller and the Comptroller approved. I became convinced that he had acted in good faith in what he had done.

"Q. Did you approve his act? A. No.

"Q. And you never have approved it? A. No, I have not.

"Q. Did you take any action with regard to the bids for this year? A. Yes, I wrote to the Commissioner in advance that unless there was a material reduction the bids would not be accepted. As soon as the tabulation was submitted to me I directed the acting Commissioner to reject all bids, which was done.

"Q. What is the position of the city now?

"A. That there are no contracts.. I do not regard the contracts made by Commissioner Oakley as in any way

prejudicing the position of the city, because they did not become effective."

The report of the Stevens Committee says of this matter that "The action of the Commissioner in signing the contracts for 1904 deserves strong condemnation, and has resulted in greatly embarrassing the city in its opposition to the payment of exorbitant prices." The $3,000,000 of the city's money has not yet been paid to the Lighting Trust. If any doubt existed before the Stevens Committee commenced its investigation as to whether the companies overcharged the city, none exists at present. The injunction obtained by Mr. Hearst was vacated by the Court because no proof of fraud or corruption was presented. When the case was brought to trial an attempt was made to prove the fraudulent character of the charges which the companies had made from the books of the companies, but the objection of counsel for the Mayor and Comptroller prevented an opportunity to inspect the books. The case is now on appeal.

The interest which Mayor McClellan has displayed in forcing the companies to pay the city what they owe, and his efforts to prevent the companies from using the streets under franchises which have expired, is best shown by his own testimony given before the Stevens Committee. It was as follows:

"Q. Has any action been taken by the city to ascertain what gas franchises are existing? A. The Corporation Counsel has been making an investigation ever since he has been in office.

"Q. Has any action been taken by the city for the purpose of stopping the use of streets where they are used without approval? A. They are now litigating to obtain possession of the subway ducts.

"Q. Do I understand that the Corporation Counsel has been over a year trying to find out whether the gas companies are exercising franchises which they do not possess? A. I do not know when, exactly, he began, but he has been a good while at it. His is a very busy office, Mr. Hughes.

"Q. What return is the city getting from the East River Gas Company under the provisions of the Act of 1892, providing for a percentage payment to the city? Do you know whether any efforts have been made to determine whether that company is paying a proper amount under that provision? A. I cannot tell you. I do not know.

"Q. The matter is all before the Corporation Counsel, but no step has been taken? A. Not that I know of.

"Q. What is your official position with regard to that, if any? A. It would depend entirely upon what the views of the Corporation Counsel might be; I should be guided very largely by his advice, he being my legal adviser.

"Q. And in case it should be found that any franchises had expired, the position would be that the company must acquire the proper franchise before it would be allowed to operate? A. Certainly."

Even those who oppose municipal ownership and operation as a remedy admit the truth of the charges against the trust. Upon every count of the indictment the Lighting Trust is guilty. That the truth of these charges is admitted by opponents of municipal ownership and operation is evidenced by two editorials from the New York *World* and the New York *Evening Post*, which are quoted below.

On April 19, 1905, the New York *World* published

the following editorial under the heading "The Grip of the Gas Trust":

"In the august chamber of the Supreme Court of the United States counsel for the New York Gas Trust yesterday pleaded against the payment of taxes due from it under a law passed when Theodore Roosevelt was Governor of New York.

"Almost at the same hour an expert testified at the gas hearing in this city how the trust increases the pressure on its mains to drive poor gas faster through the meters and rob the citizens and the city. Most amazing of all, the chief engineer of the Trust corroborated this testimony so far as the pressure is concerned.

"Even while public attention is centered upon the Gas Trust's extortion it is ranging itself with the grocer who puts powdered talc in the flour he sells, with the milk-poisoners who slaughter babies. Its 'respectable' directors not only swindle by false measure, but they menace life. A gas jet turned low at high pressure flickers out when the pressure is reduced at night and may fill a bedroom.

"Never was case more clear. As the *World* has shown, the trust is outlaw. It has no valid franchise. It has issued bonds to thrice the value of its plant and an ocean of stock besides. It earns 60 per cent. upon a reasonable capitalization. It exacts 11 cents per unit from the city for electric lighting, sold to favored customers at three cents. It can profitably manufacture honest gas for 40 cents. It does force dishonest gas through its pipes for the legal rate of $1.

"What would a private corporation, served by a capable executive, do if confronted by such extortion in a

matter absolutely within its control?

"The city is, or should be, a business corporation. What will Oakley do, who agreed to the trust's exorbitant city contract? What will the Mayor do, who signed the Remsen gas grab? What will Murphy do, who owns both the Mayor and Oakley, with that * * * Astoria gas contract among the others in his brother's convenient pocket?

"No wonder that the trust, calm in the face of the evidence of its extortion, unmoved by its voided franchises, repeats to the citizens Tweed's old query: 'What are you going to do about it?'"

And the *Evening Post,* in an editorial of April 20, 1905, deploring what it considered "The Growth of Socialism," said:

"The insolence and extortion of our railway and lighting companies have also stirred profoundly the popular consciousness. We may endure with comparative equanimity the spectacle of the elected representative of the people selling himself to a piratical corporation, but the most apathetic of us resents having his pockets picked to pay some one else's dividends on watered stock. Human nature being what it is, the gas investigation in this city has made friends by wholesale for the project of municipal gas and electric plants. When a monopoly manufactures gas at from thirty to fifty cents a thousand feet and sells for a dollar, when it meets heavy interest charges on enormous overcapitalization, when it deliberately supplies a product inferior to the stipulated quality, when it juggles with the pressure in order still further to swindle the consumer, no one can be surprised if men, in their haste, seize the weapon of municipal ownership."

CHAPTER III.

The Street Railway Monopoly.

RAILROADS IN THE BOROUGHS OF MANHATTAN AND THE BRONX.

The history of the street railroad franchises in New York City is a record of corporation fraud and municipal corruption. Its record is too long and intricate to trace in this place.

The first grant of a franchise in the Borough of Manhattan was in 1832. Since that time the Board of Aldermen have bestowed the city's franchises with a lavish hand. The city's most valuable properties have literally been disposed of by wholesale. Most of the franchises were given away without any compensation being received by the city. Eighth, Sixth, Third, Second and Ninth Avenues were rapidly acquired by the franchise grabbers. Several attempts to secure Broadway were made before Jake Sharp finally obtained the present franchise from the "Boodle Board of Aldermen" of 1884. As a result of the process resorted to in order to secure this franchise, several members of the Board of Aldermen were convicted of bribery and sentenced and several others went to Canada. But the fact that the franchise which was granted in perpetuity, was obtained by bribery, which was proved in a court of law beyond a reasonable doubt, did not impair the validity of the franchise, and it is one of the most valuable franchises which the city ever possessed. As rapidly as population moved uptown valuable franchises in the streets and avenues

of the northern part of the city were acquired by the same questionable methods. When electric power became more convenient than horse power, permission, which was equivalent to the grant of a new franchise, was obtained to change the motive power. As franchises expired renewals were obtained and with the city's growth many extensions were granted. The famous, or, rather, infamous, "Huckleberry" franchise covered 100 miles of streets and extended through Williamsbridge, West Farms, Mt. Vernon and other villages and districts. In 1893, the Metropolitan Street Railway was formed and effected a consolidation of many other railroad franchises. The Metropolitan and the Third Avenue Railroad engaged in a lively scramble to secure the Kingsbridge franchise. Finally these two companies came to an agreement and during the administration of Mayor Van Wyck this franchise was granted. The New York Elevated Railroad Company was organized in 1875 and later became known as the Manhattan Elevated Railroad Company.

A good summary of the history of the street railway franchises is contained in the "History of Public Franchises in New York City," by Mr. Gustavus Myers, and in the chapter by Dr. Max West in "Municipal Monopolies," edited by Prof. Bemis. At present all the street railroad franchises in Manhattan and The Bronx whether in, over or under the streets, are controlled by two companies. The street surface railroad franchises are controlled by the New York City Railroad Company and the elevated railroad and subway franchises are controlled by the Interborough Rapid Transit Company.

The Interborough Rapid Transit Company.

The Interborough Rapid Transit Company was incorporated May 1st, 1902, under the provisions of the Railroad Law and the Rapid Transit Act. It was organized principally for the purpose of maintaining and operating the Rapid Transit Railway under the Manhattan-Bronx franchise originally granted to John D. McDonald. It acquired all the rights of the contractor by agreement dated July 10th, 1902. This company also acquired the rights in the Brooklyn-Manhattan franchise. The terms of these franchise grants are discussed in the chapter dealing with the Rapid Transit Commission. In January, 1903, the Manhattan Railway Company leased to this company all of its railroads and property for a period of 999 years from November 1, 1875, the date of the organization of the Manhattan Railway Company. This company is capitalized for $35,000,000. Of the total issue of stock $13,600,000 was used to acquire the $6,000,000 stock and all interests of the Rapid Transit Subway Company. $9,000,000 was offered to stockholders of this last named company at par and $2,400,000 was sold to the public at 110 per cent. In June, 1904, the stock of the company was held by 415 stockholders. All of the stock was held under a voting trust for five years from May 12, 1902. Mr. August Belmont is the president of the company.

The Manhattan-Bronx Subway franchise has not yet been in operation for a period of a year, and no report to the State Railroad Commission has yet been published as to its earnings and expenditures. The Manhattan Railway division has a trackage of 37 miles and includes all the elevated railroads in the Boroughs of

Manhattan and The Bronx. The equipment of this division on June 30, 1904, amounted to 838 motor cars and 671 other cars. The net earnings from the operations of the elevated on June 30, 1904, was $8,431,634.51. For advertising and news privileges on the elevated roads the company received $219,197.22 and $15,000 for telegraph privileges. In rentals for leased lines $3,876,500 was paid, and its net income from all sources was $1,925,726.13. From passengers in cash fares, ticket fares and chartered cars the elevated roads received $14,139,359.20 for the year ending June 30, 1904. For carrying mail during this time it received $17,948. From the New York and Putnam Railway Company for use of terminal it received for the same period $10,500 and for the transportation of newspapers and messengers it received $19,878.40. The total gross earnings from the elevated roads for the year ending June 30th, 1904, amounted to $14,187,685.50. During this period the elevated roads carried 286,635,195 passengers. On the Manhattan Railway division for this year the company employed on the average 5,781 employees, including officials, to whom it paid in salaries and wages $3,909,765.37. Of this sum $145,020.15 was paid to officers and clerks. The wages of employees other than officers and clerks were from $1.55 to $3.50 per day and they worked from 9 to 10 hours per day.

New York City Railway Company.

In 1902 the Metropolitan Street Railway Company leased to the Interurban Street Railway Company its

railroad, and railroad routes, branches, connections, franchises, rights, powers and privileges for a term of 999 years. In February, 1904, the Interurban Company changed its name to the New York City Railway Company. This company was originally capitalized for $500,000 and was understood to have acquired a 999 years' lease of the People's Traction Company, which had the right to build an extensive system of trolley lines in the Borough of The Bronx and was to build some fifty miles outside of the city limits in connection with the New York, Westchester and Connecticut Traction Company. In February, 1902, the capital of the company was increased to $20,000,000. The Metropolitan Securities Company was organized in 1902 as a security-holding company with a capital of $30,000,000 for the purpose of providing for the present and future needs of the Metropolitan Street Railway Company. This company owns the entire stock of the New York City Railway Company, which, as we have seen, leased the Metropolitan Street Railway Company. It also owns all the stock of the People's Traction Company and the New York, Westchester and Connecticut Railway Company and $3,379,000 stock of the Third Avenue Railway Company. The powers of this company are very broad and allow it to acquire the securities of corporations of New York State or any other State, including corporations which own, operate or lease street surface railroads, elevated railroads, railway terminals, "or railroads of any character or description in the City of New York, or its suburbs, or in territory adjacent thereto, and corporations engaged in furnishing or organized to furnish electricity for any lawful purpose,

or power in any form, for use upon, or which may be used upon street railroads or other railroads, etc." This Securities Company paid $23,000,000 for the entire capital stock of the New York City Railway Company and the Securities Company is to acquire all further issues of stock or securities of this company. In leasing the Metropolitan Street Railway Company, the New York City Railway Company guaranteed 7 per cent. per annum on its stock. The Metropolitan is capitalized for $52,000,000. In October, 1897, a 20 per cent. dividend debenture certificate was made to the stockholders of the company and the certificate was paid off in the next year. The New York City Railway Company also pays 5 per cent. per annum on the stock of the Third Avenue Railroad.

To trace the inter-contract relations which all the various street railway companies have between themselves and to unravel the tangled web which the street railway financiers have woven to disguise their enormous profits would be too long and technical to attempt in this place. Generally speaking, it may be said that the Metropolitan Securities Company owns the stock of the principal companies, which latter companies control and hold the bonds of smaller companies and lease at large rentals the franchises of various other companies.

Each company has watered its stock many times, and the organization of a Securities Company is a convenient method by which more water is pumped into them when they are re-issued as the stock of the new company. The one fact that is perfectly clear through all this complicated tangle is that all the dividends that are paid

on all the stocks of the various companies, and all the interest that is paid on all the inflated "debts" of these companies, together with all other charges, rentals and expenses come out of the people of the community.

During the year ending June 30, 1905, the New York City Railway Company carried 433,114,493 passengers, including those carried on transfers. The average number of employees, including officials, was 8,503. During the year this company received from passengers in cash fares, ticket fares or chartered cars, $15,106,536.21 and for express and mail service it received $27,064.49.

The following table shows the roads owned or leased by this company and the terminals of each road and the miles of trackage owned by each:

Name of road or branch.	From	To	Miles owned.	Miles leased.	Miles trackage rights,	Total number of miles operated.
H. W. St. & Pav. Fy.	West & Chambers	Grand Cent. Depot		4.831		4.831
Met. Crosstown	East Riv. & Grand	13 St., N. R. & Desbrosses St., N. R.		3.897		3.897
Chambers St.	Chambers St., N. R.	Grand St., E. R.		2.357		2.357
Broadway Surface	Bowling Green & B'way	15 St. & B'way		2.463		2.463
South Ferry	South Ferry	Church & Vesey Sts.		8.86		.886
Lexington Av.	Lex. Av. & 42 St.	131 St. & Lex. Av. & 110 St. & Man. Av.		6.164		6.164
Columbus & 9th Avs.	65 St. & Col. Av.	110 St. & Col Av. & 106 St. & Ams. Av.		2.567		2.567
130th St.	130 St. & Man. Av.	130 St. & 12th Av.		.280		.280
50 and 51st St.	50 St. & 7th Av. & 51 St. & 7th Av.	50 St. & 6th Av. & 51 St. & 6th Av.		.340		.340
Dey St.	Washington St.	Fulton St. & W. B'way		.076		.076
C. P. N. & E. R. R. Co.	10th Av. & 59 St., E. & W.	So. Ferry		9.559		9.559
Bleecker St. & Fulton Ferry	11th Av. & 23 St. 14 St., N. R.	Fulton Ferry 14 St. & 4th Av.		4.741		4.741

B'way & 7th Av.	7th Av. & 59 St.	B'way & Barclay B'way & Pk. Pl. B'way & Broome Lex. Av. & 27 St.	8.270			8.270
Central Crosstown R. R.	23 St., E. R.	Christopher St., N. R.		1.810		1.810
Christopher & 10 Sts.	Christopher St., N. R.	10 St., E. R.		1.999		1.999
42 St. & Grand St. Fy.	42 St., N. R.	Grand St., E. R.		3.564		3.564
Eighth Av. R. R.	159 St. & 8th Av. McComb's Dam Bge.	Vesey, Barclay & B'way Eighth Av.	6.060	9.445		9.445
Twenty-third St. Ry.	23 St., N. R.	23 & 34 St., E. R.		1.931		1.931
N. Y. & H. R. R. (City Line)	138 St. & Park Av.	Park Row & B'way		9.878		9.878
Sixth Av. R. R.	59 St. & 6th Av.	Vesey & B'way				6.060
Second Av. R. R.	147 St. & Lenox 128 St. & 2d Av.	110 St. & Lenox Peck Sl. & Astor Pl.		13.693		13.693
Ninth Av. R. R.	Amst. Av. & Man. St.	Fulton & B'way		8.658		8.658
Third Av. R. R.	130 St. & 3d Av. 125 St. & E. R. Man. St. & Amst. Av.	Park Row & B'way Man. St., N. R. Fort George		13.190		13.190
N. Y. C. Ry. Co.	N. Y. W. & C. Traction tracks	Pelham & New Rochelle	1,570			1,570
N. Y. W. & C. Traction Co.	N. Y. N. H. & H. station, Mt. Vernon	No. Pelham			2.860	2.860
D. D. E. B. & B. R. R. Co.	11 & Grand Sts.	34 St. & 11th Av.			.424	
42 St., Man. & St. Nich. Av. Ry.	Broadway.	45 to 65 Sts.			1.069	1.069
			1.570	116.659	4.353	122.582

The Brooklyn Rapid Transit Company.

The Brooklyn Rapid Transit Company was incorporated in 1896. It is not itself an operating company, but it controls the various street railway and elevated railway lines in Brooklyn, through the ownership which it has secured directly or indirectly of the stock of these several companies. This company owns the entire capital stock of the following named companies: Brooklyn Heights R. R. Co., Brooklyn, Queens County and Suburban R. R. Co., the Sea Beach Ry. Co., the Coney Island and Gravesend Ry. Co., the South Brooklyn Ry. Co., and the Transit Development Co. It also owns not less than 93 per cent. of either the preferred or common stock of the Nassau Electric Co. and the American Ry. Traffic Co. The franchises of these several companies have undergone many changes, but most of these franchises, it is claimed, were granted for 999 years from various dates, the earliest of which was 1893. The company operates over 532¼ miles of track, of which 68 miles are elevated. On the elevated lines the motive power is partly the electrical third rail system and partly steam. The company's lines, both surface and elevated, operate over the Brooklyn Bridge. Its equipment consists of 1,408 open cars, 1,700 closed cars, 255 combination cars and 335 mail and freight cars, sweepers, snow plows and other articles and 120 locomotives. The company is capitalized for $45,000,000 and has a total bonded debt of $69,699,000, for which there is an annual interest charge of $3,243,444. After paying interest on its large bonded debt, its earnings for the year ending December 31st, 1904, were: Gross,

$15,459,660; net, $6,197,744; surplus after deducting charges, $1,473,271.

The company claims that the cost of its road and equipment is $99,114,623.75. There is little doubt that the whole could be replaced for about a third of this amount.

The company by its charter is authorized "to purchase, acquire, hold and dispose of the stock, bonds and other evidences of indebtedness of other corporations, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations." The company is the successor of the Long Island Traction Company, which was a corporation formed under the laws of Virginia, whose property was sold under foreclosure in 1895.

Notwithstanding that the Brooklyn Rapid Transit Company enjoys valuable franchises in hundreds of miles of the city's streets and has been accorded franchises which are practically perpetual, probably no corporation which has ever operated in the city of New York has shown a more consistent contempt for the public and a more complete disregard of their rights and convenience than has this company. Its cars are in bad repair and are permitted to remain in a dirty condition, while during the winter months little or no attempt is made to keep them adequately heated. The services accorded the public of the Borough of Brooklyn, that is at present absolutely dependent upon it, are simply atrocious. The treatment of its employees has always been bad, and, in common with the other railroad companies operating in the city, it has paid no attention whatever to the provisions of the labor law.

Under no railroad system in the city is it so conspicuously obvious that the road is run for private gain rather than to serve the public as it is in the Brooklyn Rapid Transit Company. Its management has always proceeded upon the theory that the public possess no rights which Brooklyn Rapid Transit was bound to respect. It is generally understood that this company means to attempt to secure control of some of the new subways to be built in Brooklyn and may even attempt to cross the river and secure franchises in Manhattan as well as in the other boroughs.

Railroads in the Borough of Queens.

The New York and Queens County Railway Company and the New York and Long Island Traction Company control the street railway situation in the Borough of Queens. The New York and Queens County Railway Company was incorporated in 1896 as a consolidation of the Long Island City and Newtown Railway, the Riker Avenue Railway Company, the Flushing and College Point Railway Company and the Steinway Railroad Company and the Queens Railway, which succeeded the former New York and North Shore Railway Company. This system covers Long Island City and includes a line to Flushing. It operates 75 miles of track and is capitalized for $5,000. Its gross earnings for 1903-4 amounted to $653,445, and its net earnings amounted to $284,390.

The New York and Long Island Traction Company was incorporated in 1900 under another name. The company operates 30 miles of road from Mineola, Long

Island, south, through Garden City, Hempstead, to Freeport, thence west from Freeport through Baldwins, Oceanside, Rockville Center, Lynbrook, Valley Stream, Rosedale, Springfield, Ozone Park (in Greater New York, Borough of Queens), to the terminus of the Fulton Street elevated lines and the Douglas Street surface lines of the Brooklyn Rapid Transit Company at Woodlawn, in the Borough of Brooklyn, with a track also, from Hempstead to Queens, in the Borough of Queens.

All of these franchises in the Borough of Queens are believed to have come under the control of the Belmont interests by recent transfers.

Railroads in the Borough of Richmond.

The Richmond Light and Railroad Company was incorporated in 1902, as a consolidation of the Staten Island Electric Railroad Company, the New York and Staten Island Electric Company and the Richmond County Power Company. This Company operates 31 miles of track extending from Howland Hook to South Beach. The company is capitalized for $3,000,000 and has an authorized bonded debt of $2,500,000.

The Southfield Beach Railroad Company was incorporated in 1899 and operates four miles of track, extending from South Beach to Midland Beach. The electric cars are leased from the Richmond Light and Railroad Company. It is capitalized for $250,000 and has an authorized debt of $150,000.

The Staten Island Midland Railway Company was organized in 1890 and in 1895 absorbed the West Brighton and Stapleton branches and the Prohibition Park Elec-

tric Railroad Traction Company. It operates 29 miles of track extending from Port Richmond, opposite Bergen Point, to Midland Beach, from St. George to Richmond, with several branches.

The company is controlled by the same interests as control the Richmond Light and Railroad Company. It is capitalized for $1,000,000.

CHAPTER IV.

The Rapid Transit Commission.

Its History, Nature and Constitution.

The Rapid Transit Act was passed in 1891. It was entitled "An Act to provide for rapid transit railways in cities of over 1,000,000 inhabitants." It provided for the continuance in office of William Steinway, John H. Starin, Samuel Spencer, John H. Inman and Eugene L. Bushe, who had been appointed as Commissioners under the act of 1875. The Commissioners were required by the act to investigate and, if they deemed that the construction of a rapid transit railroad was necessary, they were required to adopt the routes and general plan of construction of such railroad, to obtain the consent to the construction and operation of such railroad of the local authorities and the property-holders affected, or, if the consent of the property-holders should be withheld, then the substituted consent of the General Term of the Supreme Court, and to adopt detailed plans for the construction and operation of such railroad and to sell the right to construct and operate such railroad to a corporation to be formed under the terms of the act. By the 32d section of this act, a very large power was also conferred upon the Commissioners to grant additional franchises to existing railroad corporations. The act of 1894 (Chap. 752) substituted a new Rapid Transit Board for that existing under the act of 1891 and provided that such Board should be composed of the Mayor, the Comptroller and the President of the Chamber of Commerce as *ex-officio* members, and of Messrs. Wil-

liam Steinway, Seth Low, John Claflin, Alexander E. Orr and John H. Starin. It left unmodified the provisions of the act of 1891, authorizing the Board to grant additional franchises to existing railroads. It provided that the Board should either adopt the plans for the rapid transit railroad, prepared by the preceding Board, or should adopt new plans and obtain the consents of the local authorities and of the property-holders or the substituted consent of the court. It required, also, that after either re-adopting such old plans or framing new ones and obtaining the requisite consents, the Board at the next general election should submit to the qualified electors of the city "the question whether such railway or railways, shall be constructed by the city and at the public expense." It was further provided that if such question were determined in the negative at the election, the Board should proceed to sell the franchise to construct and operate such railroad to some private corporation in the manner prescribed by the act of 1891. If such question should be determined in the affirmative at the election, the act provided that the rapid transit railroad should be constructed at the public expense, and should be and remain the absolute property of the city and that the Rapid Transit Board should either provide for the construction of the railroad according to the routes, plans and specifications adopted prior to the election, or should "change and modify the said routes, plans and specifications, as they might deem desirable." The act further prescribed that, after establishing the routes and plans for the railroad and obtaining the necessary consents, the Board should, after advertising for proposals, enter into a contract with some person, firm or cor-

poration for the construction of the railroad for the city and at its expense. The contract was also to require the contractor to operate the railroad as the lessee of the city, for a term of not less than thirty-five nor more than fifty years, to be specified in the contract, at an annual rent sufficient in amount to pay the interest upon the bonds to be issued by the city to raise the money necessary to construct the railroad and not less than one per cent. in addition thereto. The contractor was to supply the equipment at his own expense. As security for the due performance of the entire contract, the contractor was to furnish a bond to the city in an amount to be determined by the Board; the city was to have a lien upon the equipment furnished by the contractor, and the contractor was also to deposit the sum of one million dollars with the City Comptroller, which was, however, to be returned when the railroad was constructed and equipped. All details as to the construction and operation of the railroad were left to the discretion of the Rapid Transit Board, and the further duty was imposed upon the Board of supervising the construction and operation of the road. The statute exempted from taxation the interest of the lessee in the contract and authorized the city to issue its bonds to raise the requisite funds for the enterprise; with the proviso that the total issue should not exceed the sum of fifty million dollars.

The statute preserved to the Board the power to grant additional franchises to companies actually operating railroads within the city.

(Report of B. of R. T. R. Com., 1900-1901, pp. 13-16.)

While the Rapid Transit Act is not a local act, New

York City is the only city which has been or is now subject to its provisions.

The act was still further amended in 1895. Vacancies were to be filled by a majority vote of the remaining members of the commission, and thus the Board was to become a self-perpetuating body. The Board so created was to have the powers conferred upon it by the act "and also such other and necessary powers as may be requisite to the efficient performance of the duties imposed upon said Board by this act."

The law under which the Commission acts is too voluminous and technical to justify going further into its details. Every section is worthy of consideration. In the very nature of things the general public cannot familiarize itself with the whole of this mass of technical details. They must rely for the protection of their rights upon their chosen officials. A volume might be written upon the powers of the Commission and pointing out sections and phraseology in the act which are more favorable to private than to public interests.

Before the Commission was authorized to proceed with plans for a rapid transit railroad it was required, as has been stated, to submit to a popular vote the question whether a subway railroad should be built at public expense.

Two ballots were, at the election of November 6, 1894, delivered to each voter, upon which the people voted: Upon one ballot was printed the words, "For Municipal Construction of Rapid Transit Road," and upon the other ballot was printed the words, "Against Municipal Construction of Rapid Transit Road." The affirmative proposition received a large majority of the vote cast. The

total vote was 184,035; affirmative, 132,647; negative, 42,916; defective ballots, not counted, 399.

From the form of this question many believed that in voting for the affirmative of the question they were voting for municipal ownership and operation of the subway. Later they learned that the city's privilege consisted in advancing the money with which to build the subway, and that when this was done it was to be surrendered to a private corporation. The city had to bear the expense and the Belmont Syndicate was to reap the profits. The idea of a subway railroad to be owned by the Municipality was bitterly opposed by those interested in other street railways, and the *New York Sun* referred to the subway contemptuously as "The Hole in the Ground," and instituted an action for the purpose of having the law under which the subway was built declared unconstitutional. The courts, however, sustained the constitutionality of the Act. (See the *Sun* Printing & Publishing Association vs. The Mayor, 152 N. Y., 257.)

The present Rapid Transit Commission is a wholly irresponsible body. Its jurisdiction extends over rapid transit in New York City, and yet its permanent members are all appointed to hold office for life by the Legislature at a salary of $5,000 each a year. It is a self-perpetuating body. They have no power to operate a railroad at present and must lease the privilege to private corporations. They are absolutely prohibited from making contracts for franchises, to be constructed with any part of the city money, for less than thirty-five years. Even if the opportunity presented itself to lease advantageously such franchises for less than thirty-five years the city could not take advantage of it. Thus the Commis-

sion is in no position to make a "bargain" with the private corporations with which they are forced to contract. The Elsberg bill, which was introduced into the Legislature as the result of the efforts of those who were really friendly to rapid transit, conferred upon the Commission the right to operate in case favorable terms could not be secured from private corporations. The bill met with the persistent opposition and bitter hostility of the Commission. The Commission based its opposition upon the ground that public operation under any circumstances would be a dangerous alternative, which should not be adopted. The Commission prefer that the city's interests should be plundered by private corporations, through contracts which they make, rather than that they should be placed in a position where they could contract with advantage to the city's best interests. The Elsberg bill contained other provisions, the adoption of which would have been of the greatest benefit to the city. The bill empowered the Commission in its discretion to let the construction contracts separately from the operating contracts and vested in the Commission power to dispense with the one million dollar deposit now required by law as security. It also provided that operating contracts be limited, in case the operator equips the road to 20 years and in case the city equips the road to 10 years, with one renewal of 10 years. The bill also provided that franchises for extension of present lines might be granted for 25 years only, instead of 35 years as at present, with renewals aggregating 20 years, instead of indefinite renewals as at present. It also contained two other excellent provisions. One provided that pipe galleries be built in connection with Rapid Transit subways, and the other provided that the

exemption from taxation feature be omitted from the Act. The separation of construction and operation would allow greater competition among contractors, and the power to operate, if satisfactory terms could not be secured from the corporations, would place the city upon an equal plane with the corporations with which it was to contract, and relieve the city from being placed entirely at their mercy. The omission of the tax exemption provision of the Act would allow the taxation of these valuable franchises. Notwithstanding all these beneficent provisions the Commission opposed the bill, which was defeated in the Senate by a combination of Republicans and Democrats.

Although the Elsberg bill failed of becoming a law, largely as a result of the efforts of the Rapid Transit Commission, the Gardner bill was passed by the Legislature and signed by the Governor on May 25, 1905. This law amends the Rapid Transit Act so as to require the separation in rapid transit contracts of the items for pipe galleries from those for construction and operation of the roads themselves. This law also provides that when any construction contract is for less than ten million dollars, the Rapid Transit Commission may accept a forfeit deposit of "such a sum less than one million dollars as the Board may determine, but in no case shall a deposit be less than ten per centum of the contract price of such construction."

This law also amends Section 35 of the Rapid Transit Act by omitting the requirement that franchises granted under Section 34 of the act shall be exempt from taxation.

Different Methods in Which the Board May Grant Franchises.

Under the Rapid Transit Act as it now stands there are two methods by which the Commission may provide for the construction and operation of railways. One method is prescribed in Section 32 of the Act, and the other method is prescribed in Section 34 of the Act.

Section 34 authorizes the construction of a road with the money of the city, while Section 32 provides that the cost of construction shall be paid by the grantee of the franchise. The nature of the franchises granted under these sections is radically different, and it is necessary, therefore, to understand clearly the provisions of each section.

Section 34—Upon City's Money.

Under Section 34 the Board may contract for the construction of railways "for such sum or sums of money, to be raised and paid out of the treasury of said city," and the person, firm or corporation so contracting to construct, maintain and operate said road shall annually pay to the city as rentals for the use of the road a sum not less than the annual interest upon the bonds to be issued by the city for the construction of said road and a further sum which shall be equal to a percentage of not less than one per centum upon the whole amount of said bonds; provided, that in estimating such annual interest and additional percentage there shall be deducted from the amount of the said bonds the amount thereof issued to pay for rights, terms, easements, privileges or property other than lands acquired in fee.

Under this section the franchise shall be for " not less than thirty-five or more than fifty years," and may also provide " for a renewal or renewals of the lease of said road upon the expiration of the original term and of any renewals of the same *upon such terms and conditions as to said Board may seem just and proper.*"

It will be observed that no time is specified to which renewals are limited, and it has been urged that under this statute the Commission may, by prescribing periods of renewals, practically grant franchises in perpetuity.

In rendering the decision of a majority of the court in the case of the *Sun* Publishing Company vs. The Mayor, (152 N. Y., 257, 271), Judge Haight said: "Nor do we think that a lease in perpetuity is permissible under the provisions of the Act. If such was contemplated, why limit the terms and provide for renewal leases? The evident intention was that, at the expiration of each term, for which the road had been leased, a new contract should be made for the re-leasing of the road upon such terms and conditions as to the Board should *then* seem just, not upon such terms and conditions as shall be fixed at the time of entering into the original lease." It has been urged by the Committee on Franchises of the Citizens' Union, a majority of whom are lawyers, that this statement that the lease cannot be for more than fifty years, is purely dictum, and the Committee adds: "That the Commission so regards it is manifest from the fact that the lease subsequently awarded to the Belmont interest contains provisions for a renewal of 25 years beyond the 50 years which the court seems to hold the maximum permissible." My own view is, that whether the statement of the court be dictum or not, it is a sound and

true construction of the statute. It is, however, clear that the Rapid Transit Commission do not consider the construction of the Court of Appeals as binding upon them, and it is perfectly evident that when they made the Belmont-McDonald contract for 75 years they acted in direct violation of the expressed views of the Court of Appeals. If the construction of Judge Haight be correct, then the Commission had no right or lawful authority to fix the terms of renewals "at the time of entering into the original lease." Yet this is exactly what it did. Whatever the correct legal construction of the lease or the powers of the Commission may be, the result is precisely the same to the community. Whether the Commission have the right to do so or not, they are, as a matter of fact, making leases for more than 50 years.

The contract made under this section "shall further provide" that "the city shall secure and assure to the contractor * * * the right to construct and to operate the road as prescribed in the contract, free of all right, claim or other interference, whether by injunction, suit for damages or otherwise, on the part of any owner, abutting owner, or other person."

Section 35 of the Rapid Transit Act, up to May 25, 1905, provided that the person, firm or corporation operating such a road as that described in Section 34 should be exempt from taxation in respect to his, their or its interest therein under said contract and in respect to the rolling stock and other equipment of said road. By the Gardner Act, this section was amended by striking out the provision as to exemption from taxation.

A franchise granted under Section 34 possesses the following characteristics :

1. The city furnishes the money for the construction of the road, provided the contractor pays the interest on the debt thus incurred and not less than one per cent. of the debt in addition.

2. It cannot be for less than 35 years nor more than 50 years.

3. Renewals, however, may be granted "'upon such terms and conditions as to the Board may seem just and proper."

4. The city indemnifies the contractor for loss sus-- tained by suits for damages "or other interference."

Section 32.—At Lessee's Expense.

Under Section 32 the Board may, from time to time, as in that section prescribed, grant a right or rights, franchise or franchises, or enter into a contract or contracts, upon the application to said Board, of "any railroad corporation owning or actually operating a railroad wholly or in part within the limits of the city in which the said Board has power to act, *or* of any railroad corporation now or hereafter incorporated and for the purpose so declared in its Articles of Association, of constructing and operating a tunnel railroad or railroads in the said city to be connected with any railroad or railroads within the State of New York or any adjoining State and thereby forming a continuous line for the carriage of passengers and property between a point or points within and a point or points without the said city."

The Board may under this section determine the route or routes by which such corporation "may connect with other steam railways, or the sections thereof, or with

steam ferries, or may extend its lines within said city; and may authorize any such railroad company to lay an additional track or tracks * * * and to acquire terminals or other facilities necessary for the accommodation of the traveling public on any street or place, except the place known as Battery Park, on which said railway may be located."

The Board may also fix (1) the location of the railways and the new tracks and facilities; (2) the plans of construction; (3) the time within which they shall be respectively constructed; (4) the compensation to be made therefor to the city; (5) such other terms, conditions and requirements as to the Board shall appear just and proper.

Nothing in this section permits the city to lend its credit or to furnish the money for the construction of the road. Under it the railroad corporation constructs the road with its own money.

The provisions of this section as to compensation are exceedingly indefinite and leave the whole matter within the discretion of the Board. This clearly appears from the following quotation from this section, which provides that the Board shall prescribe "the compensation to be made therefor to the city by the railroad corporation to which the grant shall be made, and such other terms, conditions and requirements *as to the said Board may appear just and proper.*" This requirement is subject to the further provision that every authorization and license shall be upon the condition that the railroad company, from the time of the commencement of the operation of any railroad under such authorization or license shall "annually pay to the said city *a* sum or rental," and that the

amount of such sum or rental shall be prescribed for a period of 25 years and readjusted at the end of every 25 years.

The only provision as to compensation for the city is that such compensation shall be paid "as to the said Board may appear just and proper," and that from the time that operation commences "a sum or rental" shall be paid to the city, leaving the amount of such sum or rental to be fixed by the Board.

Up to 1902 this section limited the time for which a franchise under it could be granted for a period of not more than 35 years. By Chapter 584 of the Laws of 1902, this section was amended so as to prescribe no period of limitation as to the time for which the franchise may be granted. This amendment was effected by what was called the "Pennsylvania Bill," and under it the Board may grant franchises *in perpetuity*. The Board has been quick to take advantage of this power and has already granted the Pennsylvania, the New York & Jersey and the Manhattan and Hudson franchises in perpetuity. When this bill came before Mayor Low for his approval he evidently felt the need of offering some apology for his action in approving it..

In accepting the bill on behalf of the City of New York on March 24, 1902, Mayor Low said:

"No one in this community is more adverse to a perpetual franchise than am I, but candor compels me to recognize that there is a vital distinction to be drawn between such a franchise as the Pennsylvania desires and that, for example, of the Rapid Transit Subway. If, at the end of the period for which the latter franchise is granted, the city decides to operate the railroad itself,

the city takes the entire railroad. In the case of the Pennsylvania Railway Tunnel, on the other hand, were the city to assume it at the end of a limited franchise, the city would acquire what would be of comparatively little value, without the outside railroad systems connecting therewith; while the railroad would lose what would be vital to it after its business had been adjusted for 50 or 75 years to the use of such facilities."

Such was the excuse by which an attempt was made to justify conferring power upon the Board to grant franchises in perpetuity! If the reason for granting a franchise in perpetuity was that it would be of little value to the city "without outside railroad systems connecting therewith," then the act should have permitted a grant in perpetuity only in such cases. But the power to grant franchises in perpetuity is subject to no such limitation. It is an absolute power to grant perpetual franchises in any case when the franchise in granted under Section 32. But it is not true that such a franchise as the Pennsylvania "would be of comparatively little value, without outside railroad systems connecting therewith." The city is the gateway through which the Pennsylvania Railroad could avail itself of its "Outside Systems," and through which alone it could connect these systems.

Thus a franchise granted under Section 32 possesses the following characteristics:

1. It is to be constructed and operated at the expense of the corporation and does not require the city's money or affect the city's credit or borrowing capacity.

2. It may be for any period which the Board may prescribe.

3. For the franchise the city receives such "sum or rental" "as to the Board may appear just and proper."

4. It is declared by the statute to be subject to taxation for state or local purposes.

Which Method Is Most Beneficial to the City?

A consideration of the characteristics of franchises granted under Section 34 and those granted under Section 32 leaves no doubt that it would be to the interest of the city that future franchises which are to be granted should be granted under Section 32 and not under Section 34.

To the extent that the city is obliged to pay for constructing the railroad it receives a poor return for its money, and the debt which it contracts to raise the money impairs its borrowing capacity and prevents the use of the city's credit for necessary improvements and for proper public enterprises which would be of profit to the city.

Although by the Gardner Act, the exemption from taxation provision was omitted, it is nevertheless an entirely unsettled question how far franchises granted under Section 34 are taxable. Now that the United States Supreme Court has finally affirmed the Franchise Tax Law, which subjects railroad franchises to taxation, it is a matter of great importance that private corporations securing franchises under the Rapid Transit Act should be in all respects subject to taxation. The only return which the city receives for franchises granted under Section 34, in addition to the interest on the debt incurred to secure the money to pay for construction of the road, is a sum not

less than one per cent. of such debt. Thus the corporation securing the franchise, by taking less of the city's money, may reduce the amount which it is required to pay. Thus in the Brooklyn-Manhattan franchise, the company agreed to construct a road, which it was estimated would cost $9,000,000, and only required $3,000,000 of the city's money.

It would pay the contractor to agree to construct the road for only $1 of the city's money, because by so doing the contractor might thus be relieved of the obligation of paying any substantial compensation for the franchise. It is perfectly plain, therefore, that the city's interests demand that no more franchises should be given to private interests under the provisions of Section 34 of the Rapid Transit Act.

Until the city has the legal power and financial ability to construct and operate its own railroads, those franchises, the operation of which are imperatively demanded by the needs of the public, *should be granted only for short terms and upon adequate compensation under Section 32 of the Rapid Transit Act.*

The Board has recently placed an exceedingly narrow construction upon the language of Section 32. This construction is to the effect that under Section 32 grants of franchises can only be made for the purpose of "authorizing extensions of the elevated railroads" except in the class of cases contemplated by the amendment of 1902, which referred to railroads originating outside the city and running to a point within it.

In answer to a letter of the writer to the Board protesting against granting any more franchises to private

corporations under Section 34, Mr. Orr on behalf of the Board, said:

"Again you say that a franchise granted under Section 32 'may be for any period the Board may prescribe.' This is perhaps doubtful. The whole intent and purpose of the Section as originally adopted in 1891, was to enable the Board to afford immediate relief by authorizing extensions of the Elevated Railroads. In 1902 the Section was amended so as to apply to a very limited class of railroads originating outside the city and running to a point within it. Grants of franchises can only be made under Section 32 in one or other of these two cases; and as all the companies that could apply under this Section have rights in perpetuity for the remainder of their lines a grant for a less period would be of little value. It probably was not in the contemplation of the Legislature. But however that may be, the railways now under consideration by this Board do not (except, perhaps, in one or two instances) fall within either of the two classes described in Section 32, and it is not perceived how franchises could be granted under it."

From this statement, the inference is inevitable that it is the intention of the Board to grant the franchises now under consideration, "except, perhaps, in one or two instances" under Section 34, and that in these exceptional cases the Board contemplates granting the franchises in perpetuity. Both of these plans are opposed to sound public policy. First, because grants under Section 34 do not necessarily secure adequate compensation for the city, cannot be for less than 35 years and impair the borrowing capacity of the city, and secondly, because no franchises should be granted in perpetuity. Even if the franchise

granted is only an extension of a franchise which is enjoyed in perpetuity, the extension should not for this reason be granted in perpetuity. Nor does it at all follow,as stated by Mr. Orr, that because the original franchise is granted in perpetuity, a grant of an extension "for a less period would be of little value." A franchise permitting such an extension makes the original grant more valuable and the power which the city possesses to grant or withhold franchises for such extension should be used to compel concessions from corporations claiming that their original grants are in perpetuity. The main point of Mr. Orr's letter, as appears from the above quotation from it, is that except in a limited class of cases referring to railroads originating outside the city and running to a point within it, franchises can only be granted under Section 32 for the purpose of "authorizing extensions of the Elevated Railroads." This construction is not warranted by the terms of the Section nor is it in accord with the construction which the Board has previously placed upon it. The language of the Section permits the Board to grant a franchise "upon application to said Board of any railroad corporation owning or actually operating a railroad wholly or in part within the limits of the city in which the said Board has power to act." Surely there is nothing in this language which limits the Board to "authorizing extensions of the Elevated Railroads." The only limitation imposed is that the grant shall be to a railroad corporation "owning or actually operating a railroad wholly or in part within the limits of the city." Within this limitation there is a broad field within which the Board has power to act. That the Board has never before placed such a narrow construction upon their powers under Sec-

tion 32 as that expressed in Mr. Orr's letter of May 29th, 1905, is evident from statements made in the report of the Board for 1900-1901. In that report referring to the Act of 1891 the Board, on page 13, says:

"And by the thirty-second section of the same statute, *a very large power* was also conferred upon the Commissioners to grant additional franchises to existing railroad corporations."

And in the same report referring to the amendments of 1894, the Board, on page 16, says:

"The statute preserved to the Board *the very important power* to grant additional franchises to companies actually operating railroads within the city."

Thus it appears that not only does the statute distinctly confer upon the Board the power to grant under Section 32 new franchises "to companies actually operating railroads within the city," but the Board has itself asserted this power in its report for 1900-1901, which is signed by Mr. Orr.

Existing corporations wish to obtain new franchises under Section 34. Franchises granted under this Section are in every respect more advantageous to them. This fact cannot be denied; the language of the statute is too plain to permit doubt as to this. That being the fact the Board of Rapid Transit Commissioners now contend, contrary to their formerly expressed opinion, that they have no power to grant these new franchises under Section 32, and Mr. Orr, referring to Section 32, says: "It is not perceived how franchises could be granted under it." The language of the Section will not support such a narrow construction. New franchises that are to be granted to private companies, should be granted to companies

actually operating railroads within the city, for short terms upon adequate compensation to the city with the option to the city to revoke such grants at any time upon payment of an adequate indemnity. If a doubt exists as to the power of the Board to act under Section 32, the public interests would be best served by a temporary delay until such power can be clearly conferred rather than that the city's future interests should be now sacrificed by franchise grants made under Section 34.

If the Board of Rapid Transit Commissioners desire to safeguard and protect the public interests they will in the future only grant franchises for short terms (never in perpetuity) upon substantial compensation to the city, under Section 32, reserving the right to terminate such leases at the option of the city upon payment of a just indemnity.

Franchises Which the Board Has Already Granted.

The first franchise which the Board granted was the Manhattan-Bronx franchise, which was granted under Section 34 and built with the *city's money.* The Manhattan-Brooklyn franchise was also granted in the same manner, although the city was not required to pay the whole cost of construction. The Pennsylvania franchise and the New York and Jersey franchise, and the Hudson and Manhattan franchise were granted under Section 32, or under the provision which requires that the road shall be constructed at the *lessee's expense.* The attitude of the Board in reference to the city's franchise wealth can best be ascertained by a consideration of the terms and provisions of each of these franchises.

The Manhattan-Bronx Franchise.

The Manhattan-Bronx franchise was the first franchise granted by the Rapid Transit Commission. The contract constitutes a printed volume of 180 pages, and was executed and delivered on February 21st, 1900. Under this contract the contractor agreed to construct and equip the Rapid Transit Railroad upon the routes and general plans of the Commission, to put it in operation and to maintain and operate it under a lease from the city for the term of fifty years. The city agreed to pay thirty-five million dollars in case the whole of the road is constructed, and other specified sums in case it should determine to construct less than the whole. The city also agreed to give the contractor the right to construct and operate the railroad "free of all right, claim or other interference, whether by injunction, suit for damages or otherwise on the part of any abutting owner or other person."

With reference to terminals, the contract provides that the city shall itself purchase the real estate for the terminals by condemnation or otherwise, and that the contractor is to construct them and receive the cost of such construction, with a profit of ten per cent. The total amount to be paid by the city it is stipulated shall not exceed the sum of $1,750,000. This amount which the city pays is in addition to the $35,000,000 paid for the cost of construction. The contract also provides that the city shall, if necessary, acquire lands for station and other purposes of the railroad in an amount not exceeding $1,000,000 and that if the necessary real estate should cost more than that sum, such excess is to be borne by the contractor.

The city leases to the contractor the whole railroad for fifty years from the time of completion and at the option of the contractor a new lease of the road is to be granted to him for a period of twenty-five years from the expiration of the lease provided for in the contract.

The contractor agrees to pay as rental a sum equal to the interest, payable by the city upon the bonds issued by it to provide means for construction, and also one per cent. upon the whole amount of such bonds, except that for the first five years the payment is not to be made unless the contractor's profits amount to five per cent. a year.

The contractor is, under the contract, entitled to charge for a single fare not more than five cents during the life of the contract and the franchise, rolling stock and equipment are exempt from taxation.

In 1894 the Rapid Transit Act was amended so as to provide that the person, firm or corporation operating the road should be exempt from taxation upon his or its "interest under said contract, and in all respects to the rolling stock *and other equipment* of said road, *but this exemption shall not extend to any real property which may be owned and employed by said person, firm or corporation in connection with the construction and operation of the road.*"

This tax exemption was a very important amendment, as the original Act of 1891 provided that "Every corporation organized under this act shall have its principal office and be taxed on its property in the city where its railway or railways are situated."

In 1896 the act was still further amended so as to define the term *"equipment."* It declared that "The

equipment to be supplied by the person, firm or corporation operating such road shall include all rolling stock, motors, boilers, engines, wires, ways, conduits and mechanism, machinery, tools, implements and devices of every nature whatsoever used for the generation or transmission of motor power, and including all power houses and all apparatus, and all devices for signalling and ventilation."

It will be seen how this comprehensive definition of the term "equipment" extended the original tax exemption. When the Commission made the Belmont-McDonald contract, it seems that they attempted to extend further this exemption from taxation by assigning a new and still more comprehensive definition for the term "equipment." Although the amendment of 1894 distinctly provided that "this exemption shall not extend to any real property which may be owned by said person, firm or corporation in connection with the construction and operation of said road," the definition of the term "equipment" inserted in the Belmont-McDonald contract *included* "all real estate upon which any such power house shall stand, or which shall be necessary for the generation or transmission of motive power, and all tools, implements, devices of every nature whatsoever used for such generation and transmission of motive powers, and also all apparatus and device for lighting, signalling and ventilation, whether such equipment be situate on or near or separate from the railway; provided, that the same may be used or intended for use in connection therewith, or for any of its purposes, and including all such equipment in existence at any time during or at the end of the term of the lease."

Under the contract the contractor is to furnish the equipment, but it is also provided that at the final termination of the lease the city is to buy of the contractor the equipment at a price to be fixed by agreement or by arbitration. This contract was awarded to John B. McDonald upon his offer to construct the road for thirty-five million dollars. McDonald also furnished a bond of one million dollars for the faithful performance of the conditions of the contract. August Belmont & Company organized the Rapid Transit Subway Construction Company with a capital of six million dollars to enter into a contract with McDonald to promote the construction of the road, to furnish the security given by him and to finance his undertaking.

The length and termini of the roads leased by this contract are as follows:

One route or line is about fourteen miles in length. Its termini are (1) a point at or near the intersection of Broadway and Park Row, in the Borough of Manhattan, City of New York, and (2) a point at or near the present Kingsbridge station of the New York & Putnam Railroad, in the Borough of The Bronx, City of New York.

This route was afterwards modified so as to commence at a point opposite the City Hall.

The other route or line is about seven miles in length. Its termini are (1) a point of connection with the first above-described route on the Boulevard (or Broadway), in the Borough of Manhattan, at or near its intersection with One Hundred and Third street, and (2) a point at or near the intersection of Boston Road with Bronx Park, in the Borough of The Bronx.

The contract also includes a branch or spur extending

from One Hundred and Forty-second street under Lenox avenue to One Hundred and Fiftieth street.

The Interborough Rapid Transit Company was organized April 25, 1902, to acquire and operate the franchise granted to John B. McDonald on February 21, 1900. This corporation was approved by the Board of Rapid Transit Commissioners May 1, 1902. On August 1, 1902, McDonald assigned his lease to the Interborough Rapid Transit Company, and in July, 1902, the Board of Rapid Transit Commissioners consented to said assignment.

Nowhere has the true character of the Rapid Transit Commission been better portrayed and the sham public ownership which the city has in the Belmont subway been shown than by Ray Stannard Baker in his admirable article on "The Subway Deal," in *McClure's Magazine* for March, 1905. His description of the Belmont-McDonald contract presents, in his agreeable style, with clearness and accuracy, the provisions of this complicated contract. He says: "Let us see on what terms the Subway is ours—a public possession. Let us put down, like boys trading marbles, what we give in one pile and what we get in another. We freely give the use of the streets, a permission of uncounted value. We provide all the money for building, we exempt the company from all taxation, we permit it to charge an unchangeable five-cent fare, no matter how cheaply the road can be operated, and then we throw in (like the famous Dutch farmer, who, when he sold the tail, threw in the entire hide) a contract which shuts us off from any real control of the subway for fifty years—and probably seventy-five years.

On their part, what do Mr. Belmont and his associates

give in trade for this splendid possession? First, they pay the interest on the money which we supplied, about three and one-quarter per cent., and they pay one per cent. sinking fund—or much less than what they would have had to pay had they borrowed the money in the open market and undertaken the work as a private enterprise. That is all they pay, everything. The question of equipment may be disregarded, because the city must purchase the equipment at the end of the contract term. As to the damage cases of adjacent property owners, which most corporations have to pay—why, the city, in its goodness, also engages to satisfy *all of them. The city will not get, all told, as much as if the property were subject to ordinary taxation and no other payment made whatever to the city.* By the old perpetual franchise system it was not impossible for the city to exercise some control over the street car companies, but Belmont has a contract by which, in effect, the city has actually conveyed its right to govern. Of course, the subway is nominally owned by the city—nominally—at the end of seventy-five years."

In upholding the constitutionality of the Rapid Transit Act, Judge Barrett reviewed some of the objections to the law in the following language (*Sun* Publishing Ass'n. v. Mayor, 8 App. Div., 230, 247):

"The argument against the plan outlined above would appear to be about as follows: The city is to pay for the building of the road, and is then at once to lease it to the builder for a long period. The right to own the road and receive the income is the only valuable attribute of ownership. The length of the lease is such as practically to

confer title in fee. The rent is merely nominal. Consequently the city builds the road, and substantially presents it to the contractor. And so it "gives" its "property" to the contractor in violation of the constitution. This is the plaintiff's first position. There are a number of unjustifiable assumptions here, of which the chief one is that the city can receive no substantial return for its investment. The act does not provide that the contractor shall be entitled to the lease at a rent of the annual interest upon the bonds and the further sum of one per centum upon the whole amount thereof. That is the *minimum*—a check upon the action of the Commissioners. They are at perfect liberty to obtain as much more as may be obtainable. In this particular, as in many others, they are vested with a wide discretion. The plaintiff's argument *rests necessarily upon the theory that the Board will not faithfully discharge its duties to the city, but will act entirely in the interests of the contractor*—an inference which is purely gratuitous."

This decision was, of course, rendered before the McDonald-Belmont contract was made. What was at that time a "purely gratuitous" inference became afterwards an actual fact. The Board did act in the interests of the contractor rather than of the city. It did require the *minimum* compensation allowed by law. It did make the worst possible contract which by law it was authorized to make. While the reasoning of Judge Barrett in passing upon the constitutionality of the act may have been entirely sound, the very condition which he asserted could only exist in the event that "the Board will not faithfully discharge its duties to the city," viz.: that the minimum return should be made to the city is the condition which the Commissioners actually brought about.

The Brooklyn-Manhattan Franchise.

On September 11, 1902, the Board awarded the contract for the Brooklyn-Manhattan Railroad to the Rapid Transit Subway Construction Company. The contract in general follows the form of the Manhattan-Bronx contract. Under this contract the city agrees to pay $2,000,000 for construction and $1,000,000 for terminals. The estimated cost of construction of the proposed road is about $9,000,000. The franchise is leased for thirty-five years instead of fifty years, as in the Manhattan-Bronx contract, and carries it with the privilege of a further extension of twenty-five years with the city's consent.

The contract provides for the construction of a subway connecting the Manhattan end of the East River Bridge with the Battery and by a tunnel under the East River with Flatbush and Atlantic avenue in Brooklyn.

The contract permits the company to charge a five-cent fare during the life of the contract, but secures to the passengers the right to ride to all parts of the Brooklyn-Manhattan and Manhattan-Bronx systems for a single fare. The contract also exempts the interest of the company from taxation.

In return for these valuable privileges the city is to receive as rental the amount of interest which the city itself must pay upon the bonds issued to provide the cost of construction and a further annual sum of one per cent. upon the whole of the bonds. The contractor also pays rentals upon the amount paid by the city to acquire rights of way, even when not acquired in fee.

Such is the contract to which the Board in their report for 1902 (page 3) refers as "this most favorable contract."

All that can justly be said of this contract is that it is

not in all respects as bad as was the Manhattan-Bronx contract. The enormous profit which the company will derive from this contract, providing, as it does, for exemption from taxation, is evident from the fact that the company consented to construct the road, the estimated cost of which would be almost $9,000,000, for $3,000,000.

The Pennsylvania Franchise.

On October 9, 1902, the Rapid Transit Commission issued its certificate granting a franchise to the Pennsylvania, New York and Long Island Railroad Company. This franchise was approved by the Board of Aldermen on December 16th, and by Mayor Low on December 23rd, 1902. This franchise gave to this corporation the right to construct and operate a New York underground station and a tunnel railroad under the North and East Rivers, connecting New York with New Jersey and the Borough of Queens. This franchise grants the right to build a two-track railroad from the New York boundary line in the North River to the Borough of Queens under Thirty-first street, Thirty-second street and from the terminal station at Thirty-third street and Seventh avenue under Thirty-third street and the East river to the Borough of Queens, with the right to an additional track on Thirty-third street between Seventh and Fifth avenues. It also granted a right to maintain a terminal station occupying the four blocks bounded by Thirty-first street, Seventh avenue, Thirty-third street and Ninth avenue, the lots on the east side of Seventh avenue, between Thirty-first and Thirty-third streets, and the underground portions of Thirty-first and Thirty-third streets, between Seventh and Eighth avenues and between

Eighth and Ninth avenues, the company having acquired the land included in such four blocks and lots on the east side of Seventh avenue.

This franchise also granted the right to occupy for such terminal facilities all of Thirty-second street lying between the westerly side of Seventh avenue and the easterly side of Eighth avenue, and between the westerly side of Eighth avenue and the easterly side of Ninth avenue. The right to occupy for a subordinate station the underground portion of Thirty-third street, extending from a line 400 feet west of Fourth avenue to a line 600 feet east thereof, was also granted.

The franchise gives to the company the right to have along such route the necessary facilities for the operation of passenger and freight trains, including telegraph wires and the various wires and cables for the distribution of power, heat and light. The franchise was granted in perpetuity. The compensation of the city for this enormously valuable franchise is fixed for 25 years as follows:

	First 10 yrs.	Next 15 yrs.
For the right to occupy land under the Hudson and East rivers outside of pier lines, a rental per annum of.....	$200	$200
For tunnel rights in Manhattan being 44,341 feet of single track at rental of 50 cents per lineal foot per annum for first 10 years and during the next 15 years $1 per annum per lineal foot...	22,179	44,341

For tunnel rights in Queens, being 8,100 feet of single track at rental of one-half rates payable in Manhattan	2,025	4,051
For street rights on Thirty-first and Thirty-third streets, north and south of termini, a rental of.	14,000	28,000
For secondary station at Thirty-third street and Fourth avenue..	1,140	2,280
For portions of Thirty-second street	36,000	36,000
In all, per annum.....	$75,535	$114,871

If the route under Thirty-first street be availed of these amounts will be increased by $16,652.50 for the first ten years and by $33,305 for the next fifteen years. The amounts to be paid are to be readjusted at the end of 25 years, and thereafter at intervals of 25 years. If the city and railroad company shall not agree upon the readjustment of rates, they are to be determined by the Supreme Court.

Such is the franchise of which a committee of the Rapid Transit Commission, consisting of A. E. Orr, Charles Stewart Smith and Edward M. Grout, declare in their report: "Your Committee has no hesitation in saying that its terms are, on the whole, VERY GREATLY IN THE INTEREST OF THE CITY OF NEW YORK."

The Committee in their report offer no excuse for accepting terms which secure to the city grossly inadequate compensation, although the Committee seem to offer their apology to the railroad company for having

charged it the paltry and ridiculous sum of $200 a year in return for the rights under the North and East Rivers. In the same report the Committee present their apology to the railroad corporation in the following language:

"The annual payment of $200 for the routes under the North and East Rivers outside of pierhead lines is more than nominal, though it is not important. It may be said in general that any one who bridges a navigable river or tunnels it so as to bring the opposite lands into easy communication without interference with navigation confers great benefit upon the communities upon both sides of the river. Nevertheless, it is not practicable to certainly forecast the future, and your Committee has, therefore, *deemed it wise to affirm the principle of compensation,* although making the rate for the first period of twenty-five years so small as not to be a material burden to the Pennsylvania Company."

When one considers the terms of this great franchise grant and contemplates its enormous value, it becomes perfectly evident that a competent and trustworthy commission would have been more anxious to affirm the principle of *adequate* compensation than to see to it that no "material burden" should be placed upon the Pennsylvania Company.

Inasmuch as the Commission expresses its desire to affirm sound principles, it is greatly to be regretted that it did not in this franchise affirm the principle that public franchises should not be granted in perpetuity.

The Rapid Transit Commission having thus completely surrendered the city's rights in these valuable franchises to the Pennsylvania Company, the Committee close their report with the following complimentary

reference to the representatives of the company:

"Your Committee feels bound to say that the representatives of the Pennsylvania Company have presented their case frankly and that, although it was not always easy to bring them to see the interest of the city from the standpoint of those whose duty it was to represent the city, nevertheless, they have been neither illiberal nor unreasonable."

This is the report which was accepted by the Commission and upon which this franchise was granted. The future usefulness to the city of a Commission which regards the Pennsylvania Company's contract for this franchise as *liberal* and *reasonable* ought to be perfectly apparent to every intelligent citizen not a member of the Commission or connected with a public service corporation.

The New York and Jersey Franchise.

The certificate for this franchise was granted by the Rapid Transit Commission July 10th, 1902. It was approved by the Board of Aldermen on December 16th and by Mayor Low on December 23, 1902. This franchise granted to the New York and Jersey Railroad Company the right to construct and operate a tunnel railroad consisting of two tracks running from the boundary line between the States of New York and New Jersey under the Hudson River opposite the foot of Morton Street in the Borough of Manhattan and running easterly under the river and dock and bulkhead property to West Street, under West Street to Greenwich Street and northerly under Greenwich Street to a terminal in

the westerly half of the block bounded by Christopher, West Tenth, Greenwich and Hudson Streets.

This franchise also carried with it the right to maintain a terminal and station in the block bounded by Christopher, West Tenth, Greenwich and Hudson Streets and to occupy the underground portion of Greenwich, Christopher and West Tenth Streets, contiguous to such terminal station, and also the portion of Greenwich Street between Barrow Street and such terminal station for tracks, sidings and connections.

The company also acquires, under this franchise, the right to maintain and use along such route the necessary facilities for the transportation of persons and property, including telegraph wires and the various wires and cables for the distribution of power, heat and light.

This valuable franchise is, by the terms of the grant, given *in perpetuity* upon absurdly inadequate compensation.

The compensation which the city is to receive under this franchise is shown by the following schedule:

	First 10 yrs.	Next 15 yrs.
For entrance of river right per annum	$100	$100
For terminal rights per annum under dock property and streets in Manhattan Borough, being 4,125 feet (partly estimated) of single track, at the rate of 50 cents per lineal foot for first 10 years and $1 per lineal foot during next 15 years.....	2,062.50	4,125

For street (or vault)) rights in Greenwich, Christopher and West Tenth streets contiguous to terminal station, being 29,311 square feet, at 11 cents per square foot per annum for 10 years, or at 22 cents for next 15 years	3,224.00	6,448
Additional payment for terminal rights under streets	9,000.00	15,000
In all per annum.....	$14,386.50	$25,673

The amounts of the charges are to be readjusted at the end of twenty-five years and thereafter at intervals of twenty-five years.

The last item in the above schedule for additional payment for tunnel rights under the streets is declared by the contract to be three per cent. of the gross receipts of the New York portion of the railroad company for ten years and five per cent. for the next fifteen years. As a matter of fact it is no such thing, as the gross receipts were not known or estimated, but the franchise arbitrarily fixes these gross receipts at $300,000, whether they shall in fact be less or more.

The New York and Jersey Railroad Company acquired the rights and property of the old Hudson Tunnel Railroad Company, including a right alleged to have been acquired by deeds from the State of New York to construct a tunnel under the bed of the Hudson river. The old company had already constructed over four thousand feet of tunnel underneath the river before this new franchise was conferred.

A committee of the Commission, consisting of A. E. Orr, Edward M. Grout and Charles S. Smith, made the report to the Commission upon which this franchise was granted.

In this report the committee refers, as usual, with much satisfaction, to "its long and careful consideration" of the proposed grant in perpetuity, while at the same time professing that the Board is on general principles opposed to such grants.

In this report the committee says:

"The railroad is to be maintained and operated in the States of New Jersey and New York, and any severance of the railroad at the western boundary line of the city is impracticable. The public policy against grants in perpetuity, in which the Board believes, is obviously, therefore, not applicable to the franchise now proposed. The short right of way leading to the tunnel already owned by the applicant company in perpetuity, it is plain, would never be of use to any enterprise except that company or its successor in ownership of the tunnel. A readjustment of rental charges at intervals of twenty-five years will in this case give the city all of the practical advantages which would be given by a limit of the life of the grant."

This is practically the same excuse as that urged for the Pennsylvania franchise, and which Mayor Low advanced when he signed the "Pennsylvania Bill."

It is not true that the public policy opposed to grants in perpetuity is "obviously * * * not applicable" to this case simply because the franchise granted terminates at the boundary line of the city. The fact that the company owns a franchise in another State which goes to the boundary line of the city, makes the permission to enter

the city, and thus connect with the franchise granted in another State all the more valuable. The franchise granted in the other State may be of little value unless a franchise can be obtained permitting the owners to enter the city limits. The desirable location, with which connection must be made is in the City of New York, and the city's representatives in disposing of the city's rights should consider this factor in estimating the value of the franchises which they grant. They should also consider that with the growth of the city these rights will become very much more valuable, and they should, therefore, abandon the vicious practice of granting away the people's rights in perpetuity.

The plea that a franchise which connects with a line operated under a franchise granted in another State, is of little value, is a very insufficient excuse for making grants in perpetuity for inadequate compensation.

Nor does the provision requiring a readjustment of rates at intervals of twenty-five years secure "all of the practical advantages which would be given by a limit of the life of the grant," as the Commission asserts.

Such grants make public ownership by the city impossible except upon payment of compensation which represents the value of a franchise granted in perpetuity. Thus, if the city desired to acquire the ownership of such a franchise, the measure of compensation which it would be compelled to pay would be much greater than if the franchise had been granted for a limited period. Grants in perpetuity are in themselves contrary to public policy; they not only deprive the people of this generation of their rights, but they rob the generations of the future.

It may be that the people of another generation will

not take the same view of these franchises which connect with other railroad systems in other States, which the present Rapid Transit Commission take, and if they do not, they will find themselves much embarrassed by the actions of the Commission in making grants in perpetuity.

The only theory upon which it seems possible to understand the extraordinary policy pursued by the Rapid Transit Commission in disposing of the franchise wealth of the city is that the Commission is under the impression that any corporation which consents to accept and operate a public franchise confers a benefit upon the public.

Thus, in reference to the New York and Jersey franchise now under consideration, the Committee in their report upon it use the following language, which clearly shows the spirit in which the Commission act:

"The reasons determining the opinion of the Committee as to most of the provisions of this franchise are the same which the committee submitted to the Board, and which determined its action, in the case of the franchise recently granted the Pennsylvania, New York and Long Island Railroad Company. They do not, therefore, need to be repeated. In this case, as in that, *it is clear that our true policy is to welcome every undertaking of responsible companies to increase the facilities for transportation of passengers or goods into the city.*"

The corresponding benefits which the city confers upon the companies and the enormous profits which it thereby permits them to make, seem not to be worthy of consideration by the Board.

The Hudson and Manhattan Franchise.

The Hudson and Manhattan franchise was granted by the Board of Rapid Transit Railroad Commissioners on November 24, 1903.

This franchise authorizes the Hudson and Manhattan Railroad Company to construct and operate a tunnel railroad with two tracks from Jersey City, beneath the Hudson river, passing up Cortlandt street, thence through private property on the west side of Church street, where the station is to be located, thence westerly under Fulton street to the river, and so return to Jersey City. The franchise also authorizes the construction of a foot subway from the station at Church street under Dey street to connect with both platforms of the Rapid Transit station at Broadway and John street.

THE FRANCHISE IS GRANTED IN PERPETUITY UPON GROSSLY INADEQUATE COMPENSATION. For the right to enter the city the company is to pay $100 per annum for 25 years. For rights under dock property the company is to pay at 50 cents per foot per annum for 10 years and $1 per annum for the next 15 years. For street or vault rights in Cortlandt, Dey and Fulton streets, contiguous to terminal stations, the company is to pay at the rate of 40 cents per square foot per annum for 10 years and 80 cents per square foot per annum for the next 15 years.

For tunnel rights under the streets the company is to pay $9,000 per annum for 10 years and $15,000 per annum for the next 15 years.

The total estimated sum per annum which the city would receive is, for the first 10 years, $13,040.80; for the

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next 15 years, $22,993.60.

The contract provides that, "Such annual sum of $9,000 is three per cent., and such annual sum of $15,000 is five per cent. on the gross earnings of the New York portion of said railroad, said gross earnings being estimated and fixed for the purpose of this grant at three hundred thousand dollars ($300,000) per annum, for the period of 25 years from the date on which the Tunnel Company shall first commence the actual operation of the railroad." This sum of $300,000 is a mere guess,, and, of course, bears no relation to any true estimate as to what the gross earnings of the company will be for the next 25 years. The contract also provides that the annual amounts to be paid by the company shall be readjusted at the end of the first period of 25 years, and shall thereafter be readjusted at intervals of 25 years.

The Committee of the Commission reporting upon the application for this franchise commented upon the fact that this franchise follows closely the franchise already granted to the New York and Jersey Railroad Company.

The New York and Jersey franchise is used as a precedent to be followed, and the Committee in their report to the Commission says:

"Substantially the same justification for a perpetual grant exists in this case as existed in the New York and Jersey case."

Pipe Galleries.

Closely related to the transit subways is the question of pipe galleries for New York. There can be no question but that the interest of the city requires that with

the construction of railway tunnels, galleries should be built over or at the side of such tunnels for the purpose of accommodating the various gas and sewer pipes, electric conduits, telegraph and telephone wires and pipes for compressed and hot air. The construction of such galleries for this purpose would mean much for the City of New York. It would very greatly facilitate the work of keeping these pipes and conduits in proper repair and would prevent the disturbance of the street surfaces. The constant tearing up of the street pavements which results from the present system affects the health and convenience of all the people of the city. In addition to this, the present system involves very great expense, necessitating, as it oftentimes does, the destruction of new pavements and their being replaced. It has been said that the almost perfect condition of the Paris streets is largely the result of the fact that disturbances of the street surface is practically eliminated. At present the old pipes that are buried in the streets interfere with street excavations, proper inspection is difficult, sometimes impossible, and thus the need of repairs cannot be discovered until leakage has resulted or an accident has taken place. Until 1905 no specific power was conferred upon the Rapid Transit Commission to provide for pipe galleries in the construction of subway railroads. Such galleries were not, therefore, provided for in the contract for the Manhattan-Bronx franchise. Notwithstanding this fact, it was suggested to the contractor that such galleries be constructed and paid for by the city as extra work. This suggestion was accepted and the work of construction upon them was actually begun. All of the private franchise-owning corporations,

however, appreciated that the construction of these galleries would very greatly augment the city's rights and afford the city an opportunity of protecting itself against extortion practiced by the private companies. Therefore, the contractor, although he had agreed to construct such galleries, withdrew from his part of the undertaking, and so anxious was he that the galleries should not be built that he assumed the expense of the work already done upon them. This hostility to the pipe galleries was also manifested by the Commissioner of Sewers under the Van Wyck administration, even before the contractor withdrew his support. This commissioner objected on the ground "that it would be to the best interests of both departments (sewer and water supply) if the pipe galleries were not built at all and the sewer and water mains were laid in the usual manner." The reason assigned by the contractor for withdrawing from the support of the plan to build the galleries was the possible danger to the subway in case of leaks and the effect of possible explosions of gas in the pipe galleries. An investigation showed that this danger did not exist and that this reason was assigned merely for the want of a better one. The real reason, doubtless, was that the franchise-owning corporations desired the city to remain in a dependent position.

The work of construction of pipe galleries was finally stopped when the preliminary steps were taken by an injunction, issued upon the ground that the subject was within the jurisdiction of the Commissioner of Water Supply, Gas and Electricity.

The Gardner Act, which was passed in 1905, conferred power upon the Rapid Transit Commission to provide

for the construction of pipe galleries in connection with subway railroads. To effect this change in the law was one of the principal objects of the Gardner law, but it is now contended by the franchise-owning corporations that the law does not enlarge the powers of the Rapid Transit Commission, but merely provides what shall be done with pipe galleries when they are built. This contention is interesting, as showing the policy of obstructing all improvements and progress which the franchise-owning corporations, which now have the city in their grip, persistently and consistently pursue. Notwithstanding the fact that the Gardner Act was supported by the Rapid Transit Commissioners and urged by them as a substitute for the Elsberg bill, the Commission has apparently failed to provide for the construction of pipe galleries in connection with the proposed extensions of the rapid transit systems.

In reference to this matter the *Municipal Journal* says:

"What the Commission will do in this matter is problematical. It is hoped that it will accept the opportunity to obtain something which cannot fail of lasting benefit to the city as well as to the citizens who are universally oppressed by overcharge for light, power and telephone service. The ownership and operation of pipe galleries by the city would break the backbone of the telephone monopoly and bring about a reduction of the price of electric current, for power and lighting purposes, inasmuch as such ownership and operation would admit of real competition."

Commenting upon this statement an editorial in the New York *Times* of June 3, 1905, says:

"This is a guarded expression of conservative opinion.

If advised that its powers are still incomplete, and that there is the possibility of being restrained in their exercise by an application for an injunction, the Commssion should ask the Governor to include in an emergency bill this subject in the business to be referred to the special session; or if this cannot be done, it should go ahead with pipe galleries in connection with every foot of subway designed, and not proceed beyond that point until it gets the authority it desires to render the public this large and lasting service. To neglect it will subject the Commission to merited censure for failing to take advantage of an opportunity which cannot occur again."

From the attitude which the Commission has always maintained in dealing with the franchise-owning corporations, it is not clearly apparent that the city's rights in this respect are altogether safe.

The present situation as to pipe galleries and the attitude of the franchise-owning corporations in regard to them is clearly apparent from the following statement by James C. Bayles, M. E., Ph. D., in his excellent little bulletin issued by the Municipal Art Society on, "Pipe Galleries for New York," in which he says:

"The history of the movement to provide pipe galleries for the principal streets and avenues of New York is well calculated to discourage further effort in this direction. It has heretofore been impossible to awaken any intelligent or sustained public interest in the subject, and this apathy has been taken advantage of by corporations jealous of any encroachment upon what they have come to regard as their ownership of the streets of New York and their right to dig in them as freely as one might in his own garden, to defeat legislation, deny appropria-

tions and restrain by injunctions the efforts of the Borough President to do something practical. In a very quiet and discreet way these corporations are very potent forces in defeating every movement in the direction of reforms which they do not initiate, and the results of which they will not own and control. We shall never have even the beginning of a pipe gallery system in New York until it is demanded by public opinion in terms so unmistakable that it is not susceptible of misinterpretation and so emphatic that the Mayor, Aldermen and the members of the Board of Estimate and Apportionment will not deem it safe to 'smiling put the question by.'"

Policy and Methods of the Board.

The people of this city have no realization of the actions of the Rapid Transit Commission, or appreciation of the imminent danger which exists that the Commission will in the next few years, if not prevented, give away in perpetuity, or for a long term of years, the most valuable franchises which the city possesses. The great means of transportation in the immediate future for the City of New York will be by subway railroads. These are entirely under the control of the Rapid Transit Commission. The rights to construct and operate these railroads constitute the most valuable franchises in the world. Over these the people of this city have no control whatsoever as long as the Rapid Transit Commission enjoys its present powers. The Commission, whatever may have been its intentions, have served well the traction interests and have miserably failed to protect the interests of the city. One of the reasons why the people fail to appreciate their

present danger from the Commission is because of the manner in which the press and public men have chosen to speak of it. It is non-partisan, and, therefore, supposed to be worthy of respect and confidence. Nothing could be more absurd. The gas companies and the traction interests are wholly non-partisan. As the late Jay Gould is reported to have said that the Erie Railroad was Democratic in Democratic States and Republican in Republican States, so these powerful interests in the city are Democratic or Republican as serves their private interests best. Because the Commission, therefore, is non-partisan in character does not in and of itself prove its usefulness to the city or that it acts wholly for the city's interest. The fact that the members of the Commission hold office for life and are appointed by the Legislature does not insure the wisdom of its action. It shows merely that its whole constitution is undemocratic and in direct violation of every principle of Home Rule.

It is high time that the true character of this Commission should be known, and that the people should appreciate the contracts which it has already made giving away the city's franchises, and the power which it at present possesses to foreclose the rights of the people in the valuable franchises which they still possess.

Some of our editors and public men seem inclined to do what they can to convert the Commission—in the public mind at least—into one of our "sacred institutions," which should not even be criticised. Thus the *Outlook* for April, 1905, commenting editorially upon the Commission, says:

"'The city owes a great debt to the gentlemen who constitute the Rapid Transit Commission. They have put

their time and their business sagacity at the service of the municipality, with a public spirit not often paralleled, and with resultant benefits to New York which, we think, have never been equalled in any American city. The best reward for a great service is an opportunity to render a still greater service. The *Outlook* appeals to the members of the Rapid Transit Commission to make their proved sagacity again available for the public, and to contrive some method by which the new subways can be built for the city and owned by the city; and, at whatever cost of temporary inconvenience, to use all their power and to use all their deservedly great influence against any scheme, however fathered or supported, which threatens to make the underground highways of the metropolis private property."

In reading this eulogy it must not be forgotten that the chief claim to public gratitude which the Commission has is that it made the McDonald-Belmont contract, and that although the city has a reversionary interest in the present subway, which it may enjoy after 75 years, yet it is popularly said to "own the subway." The nature of that "ownership" has already been considered. This is the contract to which the *Outlook* refers as having been secured by the "business sagacity" of the Commission, and as a result of its "public spirit." And having given to Mr. Belmont this valuable privilege upon terms wholly advantageous to him, we are to reward the Commission. And in giving the reward we are to remember that "The best reward for a great service is an opportunity to render a still greater service." Having given away the city's most valuable privileges, they are to proceed in the same spirit and give away other valuable rights which the city

possesses, upon the same terms, as rapidly as possible. It does not require a prophet to foresee that unless the Rapid Transit Commission is at once prevented from giving away the franchises for the new subways, which have already been planned, Mr. Belmont will get them upon practically the same terms as he now enjoys the present subway. It is notorious that the Board of Aldermen, whatever their intentions may have been, have in fact delivered the rights and franchise wealth of the city into the hands of private corporations. The Rapid Transit Commission, whatever their intentions may have been, judged solely by their actions, have done the same thing. The opportunity to do more damage and to strip the city of those franchises which it still possesses will be taken advantage of unless the people at once prevent it. The Rapid Transit Commission have had since 1894 to give New York real rapid transit. They have utterly failed. As the result of their efforts we have one subway railroad in operation and others planned. The one we have is in the hands of a private corporation for 75 years, exempt from taxation, with a guarantee that the fare will not during that time be reduced below five cents. It was built by public money and the public have no immediate rights in it. Even this subway railway, the only one we have in operation, as the result of the Commission's labors, has only just been completed. The delay was caused by the inefficiency of the Commission, the crookedness of politicians and obstacles purposely interposed by the street car companies. Satisfied with the dividends they were getting, those who controlled the street car companies not only would not build the subway, but were determined that the city itself should not

build it. There was never a doubt as to the personal honesty of the members of the Commission. It was because they possessed this virtue that the public have expressed confidence in them. While we commend them for their honesty, we cannot but deplore their lack of progressiveness and inability to cope with the forces to which they were opposed, and the unfortunate state of mind in which they always seem to have acted, which assumes that the public interests and those of private corporations are not antagonistic.

It may truthfully be urged that the present subway is of great benefit to the city. It has demonstrated beyond all question that subway railroads in New York are a success and the most practical method of meeting the present need for increased transit facilities. The city has learned a valuable, if very expensive, lesson from the Belmont subway. All this is true, and if the Rapid Transit Commission gave any evidence of profiting by this experience the Commission might still be entitled to some measure of public confidence.

The only defense urged on behalf of the Rapid Transit Commission is the plea that all these contracts which they have made have been authorized by law. In the first place this is not true, as is shown from the facts that the Belmont-McDonald contract granted a privilege of a 25-year renewal at the time of making the original lease, and that the attempted exemption from taxation of real estate of the company used in connection with the construction of the subway was unauthorized. In the second place, even if the contracts which the Commission have made were not contrary to law, that fact did not justify the Commission in making the worst possible contract which the law would

tolerate. The Commission should have made the best possible contract under the law. Nor does this plea justify the Commission in laying out new subways in such a way as to promote the interests of the traction companies instead of the city, nor is it any excuse for the activity which the Commission has shown in the endeavor to prevent the existing law being changed and its defects remedied.

In reading the annual reports of the Board of Rapid Transit Commissioners, one cannot but be impressed with the high opinion which the Commissioners and their former Chief Engineer entertain of themselves and all their works. Notwithstanding their dilatory actions, and the manner in which they have been imposed upon by railroad corporations, and notwithstanding their determination not to lay out any railway which should compete with existing surface lines, and their lamentable surrender of valuable rights in perpetuity for inadequate compensation, the reports of the Commission and of the Chief Engineer constantly congratulate the city and its people upon the public benefits secured by their efforts, and frequently refer to its members as having "dedicated" themselves to the public service. Judging by results, from the standpoint of the city's interests, the "dedication," which seems to have been complete and absolute, has been solely in the interest of the public service corporations.

Even though the city may not be able, as yet, to undertake the construction of new subways, the policy of the Commission seems to be to give away the franchises at once. Thus Chief Engineer Parsons (now in the employ of the Interborough Company), in submitting his alleged

"Comprehensive Plan" for Manhattan and The Bronx, says:

"All of these lines herein suggested should, if approved by the Board, be placed under construction as soon as the necessary consents can be obtained, and the terms of the contract drawn up; and it is hoped that they will be sufficient to provide for the Boroughs of Manhattan and The Bronx for some years to come."

In other words, the city is to be stripped of its valuable franchises in many of the most important streets and avenues as rapidly as possible. Even though the city may not be able to have these railroads immediately constructed and will not receive the benefits of their use for some time in the future, no time is to be lost in taking them away from the city, and the city's rights in them are to be forever foreclosed just "'as soon as the necessary consents can be obtained," and as quickly as "the terms of the contract can be drawn up."

Until the Manhattan-Bronx subway demonstrated the success of underground transportation the Commission delayed action, but now that the valuable nature of this method of transportation has been demonstrated, private corporations are losing no time in making applications for franchises, and the Commission is granting their applications with a speed that is astounding in a Commission, whose actions in the past have been so deliberate.

The Rapid Transit Commission have already prepared plans for new subways, the franchises for which will soon be contracted away. *These plans are laid out with a view not of safeguarding or promoting the city's interests, but solely in the interest of the existing traction companies.*

The plans of the Rapid Transit Commission have been discussed by the Committee on Plans of the Municipal Art Society of New York. The pamphlets which this society have issued are among the most valuable contributions which have yet been made to the literature of this subject. In a communication to the Commission, dated January 12, 1905, the Committee describes the plans which the Commission have adopted, in the following language:

"The plans recently proposed by your Chief Engineer have the merit of being definite, if not comprehensive, in character. In Manhattan they alternately provide for the convenience of the Interborough and the New York City Railway Companies, but do not meet the needs of the city. In The Bronx they provide for three separate elevated extensions of the Interborough system, and for a short spur, being a continuation of the proposed Lexington avenue line to One Hundred and Forty-ninth street, which is available for both companies. In Brooklyn they provide for the extension of the Interborough system by way of the Eastern Parkway and also via Fourth avenue, and for a possible new route by way of a proposed Governor's Island tunnel and the Battery."

Such a plan if carried out can result only in enriching the traction companies at the expense of the city, and compelling the city to part with its franchises in the future without being able to get a fair value for them. Commenting upon the folly and waste to the city of the policy of laying out new lines in the interests of the traction companies, the Committee of the Art Society says:

"The city is not dependent upon existing transit corporations; they are dependent absolutely upon it, and at

the present time upon you (the Rapid Transit Commission). Underground transportation of passengers, gas and electricity in the interests of the community will be determined by the new subways and their control.

"With the exception of the subway now built, the city is in complete possession of the possible underground highways. New subways should not be made dependent upon those existing or upon the private surface lines of the city, but should be planned with a view to their most effective and profitable operation by other corporations as well."

Further commenting upon the plans of the Commission, the Committee says :

"The plans proposed by Mr. Parsons are a particularly frank statement, in transit engineering terms, of a proposition to surrender the control of Rapid Transit throughout the greater city for generations to come."

The Municipal Art Society have proposed a comprehensive plan of securing rapid transit in which lines are laid out solely with a view to promoting the best interests of the city and the convenience and welfare of its population. This plan differs from that of the Rapid Transit Commission in that it proceeds upon the principle that the city is not at the mercy of the transit corporations, but that the future success and profit of the transit corporations depends upon the lines which the city shall adopt for its new subways.

The plan of the Rapid Transit Commission is based upon the directly opposite principle that the city is entirely dependent upon the transit corporations and that it must authorize the building only of such new subways as the interests of these corporations shall require. The plan

suggested by the Art Society is worthy of the most careful consideration. At present the city holds the key to the situation if its rights are not betrayed by the Rapid Transit Commission.

The franchise rights to operate under the streets are all, with the exception of those granted by the franchises already referred to, still the property of the city. For a century the city's rights in and over the streets have been exploited, and private corporations still possess many legal privileges in them. But substantially the whole sub-surface of the city's streets still belongs to the city. The Committee of the Art Society sums up the situation in saying that :

"Superficially, the city has been exploited in private interests; underground New York is still a virgin plane, not even bounded by the rivers and under practically complete municipal control."

The new subways must be built in the immediate future. There are three attitudes which the city may take in reference to them :

1st. That of the Rapid Transit Commission of giving them away in perpetuity or for long terms and upon conditions substantially similar to those upon which they granted the Belmont subway franchise.

2d. That of leasing them for short terms to private corporations and attempting to reserve for the city the right of control and regulation ; and

3d. That of building them by the city and of having them operated by the city in the interests of all the people.

The Traction interests and the Rapid Transit Commission are about the only elements favoring the adoption of

the first method. The other two methods of control and regulation and municipal operation will be discussed later.

The Belmont monopoly, by the grace of the Rapid Transit Commission, is grasping New York City in its toils, and unless the people take decisive action at once, the city will be completely at its mercy. Mr. Ray Stannard Baker's summary contains a warning against, as well as a description of, the growing Belmont power :

"The people do not realize what this Belmont monopoly has already come to be. It is not only the greatest combination of street car interests New York ever had, but it promises to be the most piratical The aims of Belmont, and the European Rothschilds behind him, is *complete* monopoly. Already he controls the subway and all the elevated railroads in Manhattan, he owns the surface-car lines in Long Island City, and he has just acquired the old *perpetual* franchise of the Steinway Tunnel Company, which enables him to build another tunnel to Brooklyn ; and he is on the way to obtain other important rights. Through his associates, also, he is interested in the new Hudson River Tunnel, which recently obtained a franchise up Sixth Avenue, thereby giving him a grasp of the passenger traffic of Jersey City. And *now* he is trying to get hold of the financially dishonest Metropolitan Railway Company, which controls the surface lines of Manhattan. When he gets that he can rest with smiling content, having captured the city."

That Mr. Belmont is well satisfied with the existing situation we know, for he has told us. He has even gone so far as to congratulate the public upon the contract which it made with him for the building and operation of

the subway and to warn us of the dangers of municipal ownership.

Listen to what Mr. Belmont says :

"That the enterprise in its results has been completely successful should be the subject of cordial congratulation by all citizens. * * * At a time when there are so many ill-digested and ill-considered plans under discussion, having for their object not only municipal ownership, but municipal operation of transportation lines, the State of New York has reached the true solution of this problem—*that municipal participation is justified to the extent of furnishing credit for the construction of such a work, but should stop short of the operation of the property when constructed.* To private interests should be committed the risks and the burden as well as the profit of constructing, equipping and operating the road, the latter not being within the governmental functions or other legitimate province of a municipality."

CHAPTER V.

Bridges.

The observations of the Committee on City Plan of the Municipal Art Society, discussing the use and control which the city should exercise over its bridges, are worthy of consideration. In their report on Rapid Transit in New York City in November, 1904, the Committee said.

"Of these, the four great East River bridges (Brooklyn, Manhattan, Williamsburgh and Blackwell's Island), together with the East and North River tunnels, should be considered essential parts, of which the city should never surrender its exclusive control. To all intents and purposes and as a consequence of the new bridges and tunnels, New York will ultimately become a square or round city like Chicago or Paris, with the added advantage of cheap independent water transportation for commodities. These bridges and terminals are consequently the keys to the successful development of passenger transportation in the interest of the passengers.

"Control over these will, therefore, be eagerly sought by existing transportation companies, whose lines now constitute separate links of a temporary system; which, for economy and convenience, must soon be welded together. The bridges and river terminals in New York hold a position analagous to that of the present subway in the congested district of Boston, the control of which by that city enables it to regulate the entire elevated and surface systems which must use the subways."

The Legislature at the request of the Rapid Transit Commission extended the powers of the Commission so

as to give them control over transit on the bridges.

Bridge Terminals.

Bridges should be regarded as streets and by means of subway or surface roads should be so extended that there should be no distinctively "bridge terminals."

This view has received the consideration of the Committee on City Plan of the Municipal Art Society.

The discussion of this subject by this committee, of which Mr. Calvin Tompkins is chairman, is so valuable and instructive that I shall quote extensively from it. The following quotation is from that report:

"Between Manhattan and The Bronx there is a bridge at which focuses the east side rapid transit traffic of both boroughs. We never hear of fighting crowds at either end; we have never been bothered about the connecnections which the traffic over it makes with the routes to the north and south.

"Between Manhattan and Brooklyn we have one bridge long in use, another ready, and another building. In the case of the first the crush at its Manhattan terminal is a danger and a scandal, and its relation to Manhattan traffic a problem even more acute. Similar conditions are assumed as probable at the Manhattan ends of the "Williamsburg" and "Manhattan" bridges, unless we meanwhile find a way out—in each case the only serious trouble being at the western end.

"It is true that, within a thousand feet of the Park Row end of the present Brooklyn Bridge is located the daily work of so many who arrive by it that a station there might always be a fairly busy one. But the great mass of those who arrive in Manhattan by the Brooklyn

Bridge are dumped out at Park Row, far from their destination or from any connection by which they can get to it.

"What, then, is it that turns into pandemonium at City Hall Park conditions everywhere else too well handled to be other than commonplace? It is this, and this only: In the sense that it is so adjusted as to create congestion the Park Row bridge station (*one end* of a single bridge) is our only bridge "terminal"; and, at that, it is one too many. As a factor of a transport system a bridge should have *no* "terminals" but should be simply the section of a continuous route that happens to be carried over water. There is no more excuse for dumping all passengers at Park Row than there would be for putting them all out at any single point in Brooklyn, to dodge about on foot in the weather. There is no reason why all Bridge cars should not go west to the North river, as well as east to Long Island destinations; no reason why a Manhattan passenger should not be able to transfer to or from a Bridge car at Broadway, West Broadway and West street as well as Park Row, and thus connect with every north and south line in Manhattan and with Jersey City ferries and tunnels as well.

"If bridge traffic needs loop facilities, congestion might be avoided and public interest better accommodated by sending west bound cars to West street by some cross street a few blocks north of the Bridge, then southward along West street and back eastward a few blocks south of the bridge (the direct westerly approach to the bridge underground through City Hall Park being temporarily sealed by the line of the first subway).

"Why has such a plan not been followed here? *It has*

repeatedly been followed, but only in cases where the one who arranged matters was so inspired by private interest that he could see beyond the end of the Bridge. When the Brooklyn Bridge was first opened, our city officials standing upon it saw beyond neither end of it, and we had Bridge cars—*without connections at either end.* Later "Brooklyn Rapid Transit" has been given possession, and since then the B. R. T. depends on Brooklyn connections, the Bridge has them. The B. R. T. does not control Manhattan connections, so the Bridge dumps its passengers at Park Row. The "Metropolitan" aggregation of Manhattan swallowed the Bronx system. That insured that its passengers should not be discharged with an "All out" at either end of its Harlem Bridge.

* * * * * * *

"Current 'plans' involve either a subway or an elevated structure *connecting the Manhattan ends* of the two bridges ("Brooklyn" and "Williamsburg"). What for? What reason is there to think that more people want to go from one bridge to the other than wish to travel between City Hall Park and any other place as far out of the way as the junction of Suffolk and Delancey streets? Why not continue the trains from each bridge to where passengers do want to go? Or to connections that will most promptly land them there? The answer is one that he who runs may read. It is assumed that the Metropolitan system will fight any continuation of Brooklyn lines into Manhattan; that the B. R. T. would collapse if it were turned off the Bridge and the Metropolitan allowed to establish rapid transit facilities from all Manhattan to our eastern suburbs; that the Belmont interest insist that

each new factor be made such a mere extension of its route so that no other contractor can bid; and, finally, that the City has no rights—though it owns the bridges and the streets, and must pay for building the lines, and its citizens are to use them.

"The situation is an embarrassing one—if all that the City has to do is to apportion its rights between private undertakers. But it is a clear one—so clear that if longer muddled by failure to vindicate the City's interests it will neither be forgotten nor pardoned by our people.

"What should be done? Just what, if the "Metropolitan" or the B. R. T. or the Belmont interest had owned what the City now owns, either would long since have done. A comprehensive plan should be devised for rapid transit throughout the city; not for complete realization at once, but that each step may be taken with intelligent reference to the end in view. Any contractor, corporate or individual, could then bid for any portion with regard to its relation to the whole—already fixed in the public interest. But until such plan exists, the adoption of any proposition—however well intended or well worked out by itself—must almost necessarily embarrass future development.

"Such a plan should be devised with little or no regard to operation by present franchise corporations. So far as concerns their systems, these are so obsolete and inadequate, and would be so dependent for profitable operation on transfer and other connections with the new lines, that for the City to wait for them or yield to their defiance would be to lose dollars to save cents, and be mulcted for generations to gain a few months now. Within twenty years—largely within ten—there will be left worth con-

sideration (except as incidentals) but little of our present surface and elevated systems. The idea of our present franchise corporations venturing a real struggle with the one power that can parallel at cost—without watering stock—every facility they can offer, is preposterous. On the contrary, if the City insists, they will be glad to serve it on its own terms; and when these are settled, they may well prove our very best agents to operate a large part of our developing system.'

From these considerations this report presents the following conclusions:

"(1) *Whatever one or another of our franchise corporations may want,* the City has no special need for either elevated or subway connection between its bridge terminals in Manhattan; and the way to treat the present problem of danger and riot is radically to better present conditions in the way best calculated to serve our people, leaving each and every franchise corporation to make the best of that result; and

"(2) A bridge should not be considered as an isolated structure, but simply as a 'trunk' section of continuous streets reaching every locality of the city; hence, for transit purposes, involving no special scheme of 'terminals' whatever."

The Brooklyn Bridge.

In 1867 the New York Bridge Company was incorporated by Act of the Legislature and under this act the cities of New York and Brooklyn were authorized to subscribe to its capital stock by vote of two-thirds of the council in each city, and to issue bonds in pay-

ment. Under this act these cities or either of them were authorized to purchase the bridge at any time upon payment of the cost and one-third additional. In 1869 both cities subscribed to the stock and the Mayor, Comptroller and President of the Board of Aldermen in New York and the Commissioners of the Sinking Fund in Brooklyn were made directors of the Company. In 1874 the two cities were authorized to buy out the private stockholders and the bridge became a public work. The expense of construction amounted to $15,000,000, of which Brooklyn paid two-thirds and New York one-third. From this time until the consolidation and the establishment of Greater New York, the bridge was managed by a board of eight trustees. The Board of Trustees was empowered to operate a railway over the bridge or lease the right to operate to others. It established public operation and for many years the railway over the bridge was the only publicly-owned and operated railway in the United States. In 1897 the Board of Trustees ceased to exist and the bridge came under the control of the Commissioner of Bridges of the City of New York.

In order to get rid of the only municipally-owned street railway in New York City, the railroad companies agreed, if permitted to run their cars over the bridge, to carry passengers without any additional charge. This offer was accepted and the Brooklyn Rapid Transit Company was permitted to run its cars over the bridge in consideration of paying the city 12½ cents for each elevated railway car and 5 cents for each surface car. In speaking of these terms, Dr. West says it was "a needlessly great sacrifice of revenue, it would seem, however

desirable the innovation." This criticism is undoubtly just, although it must also be considered that in thereby dispensing with the Brooklyn terminal the public convenience was very greatly promoted. It is also worthy of note in this connection that no long-term lease was given to the railroad company and the city's right of control was in no way surrendered. The company was permitted to operate its cars over the bridge under a mere license revokable on three months' notice by either party to it.

Inasmuch as the public railway over the bridge was the only municipally owned and operated railway in the United States, the results of this operation should be carefully considered. The public operation of this railway was from the standpoint of the city a very great success. In writing of it Dr. West says:

"The management of the bridge and the bridge railway, as compared with that of the elevated and surface roads in the two cities, has been, on the whole, remarkably good."

Prof. Bemis, in discussing "Street Railways" in "Municipal Monopolies," presents a detailed study of its operation which is reproduced below. He says:

"The Brooklyn Bridge Railway has been famous since 1883 for its enormous traffic, efficient service, remarkable freedom from accident and its admirable treatment of its employees. It has hauled over 500,000,000 passengers with only two fatal injuries, one to a passenger and one to a trainman, and one other serious injury to a passenger. The total amount of time lost on the railway by delays from all causes in 1896 was only 4 hours, 48 minutes, an average of 40 seconds per day, and of one

minute for each 152,765 passengers carried. The writer made a personal investigation of the treatment of employees in 1897, and found that the engineers received 50 cents per hour for 8 hours, or $4 a day, and the firemen 29⅝ cents an hour, or $2.37 a day; while the engineers on the privately owned elevated roads in New York and Brooklyn received $3 a day the first year and $3.50 afterwards per day of 10 hours, and the firemen, for a similar 10 hour day, received $2 in New York and $1.75 in Brooklyn. The ordinary train hands on the Bridge Railway received $2.86 for an 8 hour day, as contrasted with $1.50 to $2.30 for a 10 hour day on the elevated roads. The Bridge Railway employees also received free medical attendance in case of injury and usually half their regular wages as long as needed, a two weeks' vacation on full pay, rubber coats and gloves, and two suits of uniforms a year. The employees of the private owned roads said they had none of these advantages, but had to pay $9.80 for their summer suit and $12.60 for their winter suit. The road has charged 3 cents for a single fare or 2 tickets for 5 cents, and has received an average fare of .273. In 1897, the last year for which an official report is at hand, the total cost of transportation for the nearly 46,000,000 passengers in that year was apparently about $200,000 less than the receipts, if the expenses for interest and extensions, policemen, and some other charges connected with other parts of the bridge, be excluded. In fact, if a full separation could be made of the railway expenses from the other expenses of the bridge, it is quite likely that more than $200,000 of excess of receipts would be brought to light; but even the latter amount to be credited to depreciation and

profit is 13 1-3 per cent. on the $1,500,000 which the Chief Engineer and Superintendent of the road, Mr. Charles C. Martin, declares was the cost of the road itself, although the road and bridge together are said to have cost $15,000,000."

Williamsburg Bridge.

The manner in which private corporations desire to secure control of the bridges which are highways of the greatest importance is revealed in the contract made by Commissioner Best with the Brooklyn Rapid Transit interests. The Commissioner of Bridges, in August, 1904, made a contract by which these companies are permitted to operate a railroad on the bridge for a term of ten years. The Bridge Operating Company was formed, with a capital of $1,000,000, for the purpose. Thus during this period the lessees can prevent the development of all transit plans which involve the use of the Bridge and the city's right of effective control is surrendered.

The Committee of the Municipal Art Society protested to the Mayor against this contract, saying:

"In the opinion of this society, the four East River bridges, which, when completed, will have cost the city upwards of seventy millions of dollars, constitute the great highways of Long Island leading to Manhattan, and their full use for all purposes of municipal travel should be maintained to the utmost practical extent.. It does not seem to us desirable or right that the tracks upon them should be turned over exclusively for so long a period as ten years, as has been done in the case of the Williamsburg Bridge."

It is certainly true that an official appointed by the Mayor should not be permitted to make a contract limiting the city's control over one of its most important bridges for a long term of years.

That the Bridge Commissioner is likely to make other contracts of like character is apparent from the letter of Commissioner Best to Calvin Tompkins, Esq., as chairman of the City Plan Committee of the Municipal Art Society, on June 23d, 1904, in which the Commissioner not only reasserts his belief in ten-year contracts, but assigns a most ridiculous reason for holding this view. In his letter he says:

"In my judgment, ten years is the proper term of an agreement such as we are now making on the Williamsburg Bridge. It will take half this time to determine whether the thing will work satisfactorily or not, and the other half will be necessary to enable the city officers to determine what different thing they care to do at the expiration of the lease."

It would seem that the success of the contract might be determined in less than five years, and that competent city officials ought to be able to determine "what different thing they care to do at the expiration of the lease" in less than five years.

CHAPTER VI.

Functions of Government.

It is the function of government to secure equal rights to all. When men have equal opportunities and engage freely in competition no injustice results to those so engaged or to society. When government grants to some a special privilege without requiring a return equal to the value of that privilege an injustice is done to all. No person or corporation without the consent of the government has the right to lay pipes or wires or tracks in the streets of a city or to exert the right of eminent domain or to collect tolls unless he or it is first authorized to do these things by government. The grant of the right to do any of these things is a special right, or privilege, which is contrary to common right or the privileges enjoyed by others. When by virtue of such special privilege or franchise, corporations are permitted to use the streets for the purpose of transporting gas, electric current or passengers, they enjoy a permission to make use of the streets which is denied to others. As the services rendered by these corporations are rendered to the public, who are prevented from rendering such services for themselves, the public become absolutely dependent upon their proper performance.

The idea that corporations owning public franchises serve the public best as a result of competition is no longer generally accepted. Business men have long since recognized as true George Stephenson's statement that "When combination is possible, competition is impossible," and that combination is not only possible, but in-

evitable in great public service functions, such as ferries, street railways, gas and electric lighting. Such public services can not only be best rendered by those possessing a monopoly, but ultimately must become monopolies and be administered as such. These public services are now very generally recognized as natural monopolies, and the fact that the public are interested in their proper administration is appreciated by everybody but the corporations charged with the duty of performing them. Many of them, unfortunately, still adhere to the elegant and often-quoted aphorism of the late Commodore Vanderbilt, "The public be damned."

Those engaged in performing such public functions are no longer regarded as operating merely their private business affairs. The performance of these public services is public, not private, business. The proper operation and administration of these natural monopolies is essential to the well-being and the comfortable existence of modern city life. Since the performance of these public services is a public necessity, the public should not be dependent upon private corporations for their proper operation. Because they are natural monopolies and public necessities they are proper functions of government. With the development and complexity of modern city life has come a need for the expansion of the functions of government. In the first stages of a farming community the simple needs of each inhabitant are within the power of each to statisfy. When the farming district develops into a village, or town, a few inhabitants make their living by serving others; by acting, for instance, as common carriers of their persons and goods. When the village becomes a great city, ministering to the wants and neces-

sities of millions of people living over miles of space and in close intercourse with one another, the inhabitants become absolutely dependent upon those who have these public functions to perform. If those enjoying these public functions, realizing their power, increase their profits and neglect the general welfare and trample upon individual rights, the only way open to the individual to protect himself in his rights, is to have the government, which is his representative, administer these functions for the benefit of the whole community with due regard to the protection of the individual rights of each citizen. Nor will the public be deterred from thus protecting their individual rights by the cry of Socialism. Municipal operation is not Socialism in the sense in which that term is generally used. Municipal operation is the only means left to the community of preserving and protecting the individual rights of each citizen against the complete monopoly which is enjoyed by private corporations in rendering these public services. Consolidation we must have in these natural monopolies; it is cheaper and better; it is the irresistible tendency of the time, and will be of the future. Let us, therefore, have consolidation in the interests of the public. Since the operation of public franchises naturally results in monopoly, this monopoly should be placed not in private hands to be operated for private gain, but in the hands of the public to be operated for the public good. Since the government exists to secure the equal rights of all, every monopoly is within the sphere of governmental regulation and if the monopoly is complete and competition cannot be restored by withdrawing the special privilege upon which it rests, its operation becomes properly a function of the govern-

ment. The operation of railroads, the supply of gas and electric current for light, heat and power, are natural monopolies in our modern cities and should, therefore, be treated as functions of the city government.

CHAPTER VII.

Regulation and Control as a Remedy.

It is frequently urged by those who appreciate that such public services as are furnished by gas and electric light plants and street railways are natural monopolies, but who fear to have them operated by the city government, that they should be placed in private hands and subjected to municipal control and regulation. There are, however, very good reasons why this policy should neither be adopted nor encouraged. Such a policy is unjust in that it grants to some a special privilege or exclusive opportunity for making a profit which it denies to others, and such attempted control and regulation is ineffective and fails to protect either the taxpayer or the user or consumer of the public service. Control and regulation recognize private monopoly and attempt to modify or restrain its actions while admitting its property rights from which naturally flow a right to exercise control. As Prof. Parsons has said:

"It lets one set of men do the work and employs another set to determine how it shall be done, and a third set to watch the first, and see that the regulations provided by the second set are properly obeyed." (City for the People," p. 106.)

The attempt to regulate and control private monopoly does not do away with the antagonism which inevitably exists between public and private interests. Many of the laws advocated by those who favor regulation and control, but oppose public operation, are good in themselves under present conditions and as temporary meas-

ures could not be other than useful and beneficial to the community. Thus, those requirements which compel public service corporations to keep proper books of account pursuant to some uniform method of bookkeeping, and which require publicity and seek to make over-capitalization impossible, are beneficial as far as they go. In the main, however, they will doubtless in the future prove to be almost as impossible of enforcement as they have been in the past. Until the people are ready to have the government assume its proper functions, and operate these natural monopolies, these measures are valuable only as preliminary steps toward the attainment of that end. The slight information that may be obtained by these means may also prove of value to the public when the public shall assume their actual operation. Except for incidental benefits the efforts at public control and regulation of private monopolies will prove worthless. Actual experience shows us that this is true. Such measures have in a greater or less degree been generally adopted and whenever adopted have proved a source of disappointment to those interested in them. The requirement that public service corporations shall make sworn returns has encouraged perjury among corporate officials (who needed no such encouragement) but has accomplished no other purpose. The methods of corporate managers in organizing, disposing of their stock, dissolving, re-organizing and consolidating; together with the transferring of their stocks, leasing and sub-leasing to themselves and to one another, and the inter-contract system which exists between them, makes it utterly impossible to ascertain either their present status or to compel their obedience to the details of State or muni-

cipal regulations. The complicated legal system which exists enables them always to take refuge behind some law, that was perhaps designed for an entirely different purpose. A despotic government bound by no law and not under the necessity of proceeding against them strictly according to law, might regulate or control them. But under a popular government where every step must strictly conform to statutory and constitutional limitations, there is little likelihood of their being effectually regulated or controlled. Henry George has well said:

"As for any satisfactory State regulation of railroads, the experience of our States showed it to be impossible. A strong-willed despot, clothed with arbitrary power, might curb such leviathans, but popular governments cannot. The power of the whole people is, of course, greater than the power of the railroads, but it cannot be executed steadily and in details. Even a small special interest is, by reason of its intelligence, compactness and flexibility, more than a match for large and vague general interests; it has the advantage which belongs to a well-armed and disciplined force in dealing with a mob." ("Social Problems," p. 181.)

Corporations inform themselves fully of the law before they act, and, guided by the most skillful legal talent, they find little difficulty or risk in violating it or in placing themselves in such a position as to be free from control or regulation under existing laws. When the legislature or municipality have introduced new laws to meet their case and to subject them to control or regulation, they have experienced little difficulty in altering their legal position either by becoming a voluntary association or by assigning their rights or placing their stocks with for-

eign corporations, so that by the time the new law has been placed upon the statue book and the officials are ready to enforce it, it has very little application to the corporations sought to be controlled, in their now changed condition. If corporations operating such natural monopolies could be compelled through regulation and control to make adequate compensation to the public for the public franchises they now enjoy and could be prevented from practicing extortion through high prices and high rates or fare, the community might consent to have these monopolies remain in private hands. But already a sufficient number of *bona fide* attempts have been made to permit of a fair estimate of the results of such regulation and control. Every such attempt has resulted in failure. Failure has resulted either because it was in its very nature unavoidable or because of the fraud of the monoply and in many cases both causes have contributed to the failure. Massachusetts has tried public control. Regarding this experience, Mr. Ernest Howard, writing in *Municipal Affairs,* says:

"And present disclosures in the gas business of certain Massachusetts cities go to emphasize the above views, for they record the practical failure of the plan of public regulation and restriction of the operation and profits of these monopolies. Under a commission especially charged with the oversight of the companies, it has appeared that the companies have done about as they pleased and paid what rates of profit they pleased, and now they are engaged in beating the law which confines capitalization to money actually paid in by the stockholders, organizing securities companies which take over the gas companies stock and issue these at a new and greatly inflated capitali-

zation, which is used to spread exorbitant charges over a wider surface in a lower and less conspicuous rate of dividend. The case affords the most striking illustration at hand of the essential weakness and viciousness of the principle of private monopoly ownership." (Dec., 1899, p. 749.)

Professor John H. Gray, of the Northwestern University, has made a thorough study of the gas question and admits the difficulties in the way of public control or regulation. His account of the attempt of the Massachusetts Gas Commission to regulate and control the Boston gas companies shows that their efforts have resulted in complete and absolute failure. The conditions in Massachusetts were certainly as favorable to the successful exercise of public control as will probably be found in any other State in the Union. The Massachusetts Gas Commission has unlimited inquisitorial powers; it possesses complete power over the capitalization of companies, with power to admit or exclude competing companies and with authority from the State to fix the price of gas. The policy of permitting a monopoly to exist under State regulation and control, and protecting it from other competitors has become established in Massachusetts. The result has been that the corporation enjoyed the monopoly in which it was secured, but it did not submit to regulation and control and the attempts of the Commission to regulate and control it proved futile. With all the power delegated by the State to the Commission they are unable to ascertain the true facts as to the cost of manufacturing gas which would enable them to fix a reasonable price and they have been unable to prevent over-capitalization and its consequent evils. After re-

viewing the attempts to control the gas companies supplying Boston; Professor Gray says:

"But if it (Gas Commissioner) had perfect access to all the books and records of all the companies, so long as the inter-company contracts exist and are entered into and changed at will by men who in each case are making contracts with themselves, we cannot presume that the Commission will ever get permission to make expenditures enough to enable it to keep up with the hide-and-seek game played by those in control of the industry, or to audit the accounts of the different corporations all kept by the same men, often enough, or with sufficient care to have any confidence in a judgment based on them or to presume to justify that judgment to the public. It is utterly impossible for any public authority in Massachusetts to say what a fair price for gas in Boston is." ("The Difficulties of Control as Illustrated in the History of Gas Companies." Address at the fourth annual meeting of the American Academy of Political and Social Science.)

Prof. Gray, while admitting the uselessness or ineffectiveness of control and regulation, is not willing to accept the alternative of public operation and he almost despairingly announces "that the hope of the future lies in patiently improving and perfecting the educational work of administrative control, with its uniform bookkeeping, accounting and public inspection."

In this proposed remedy which he suggests, the Professor evidently has not very much confidence, for he pathetically adds:

"If this fail ultimately, we shall of course try something else; but I for one shall come to believe with Cyrano

de Bergerac that 'one does not fight because there is hope of winning' and that 'it is much finer to fight when it is no use.' "

Attempted control and regulation have failed whenever resorted to in the past, and will fail in the future. As a proposed remedy it is utterly inadequate. The majority of our citizens, realizing that their attempts at regulation and control have been defied and that they are subjected to inconvenience and extortion from these public service corporations, will not hesitate to adopt the obvious alternative of public ownership and operation.

CHAPTER VIII.

Arguments in Favor of Public Ownership and Operation.

In the discussion of the Gas and Electric Lighting Companies and the Street Railways of New York City, the evils of private monopoly have been sufficiently manifest.

Excessive Charges—Power to Tax.

Private monoply always results in excessive charges. It is because the monopoly secures the excessive profit that men try to get it so that they will not be forced to accept the rate fixed by competition. Every excessive charge which a public service corporation collects from the consumer is a tax levied upon him for private purposes. These public service corporations, in being able to charge excessive rates for the necessities of life possess and exercise the power of taxation. It is taxation without representation and taxation levied solely for purposes of private gain. The power to tax is a function of government and ought to reside only in public hands and should only be used for public purposes.

Prof. Bemis, the gas expert, says truly that "Gas is a monopoly and the individual consumer has no protection from extortion unless it is given by the city and the State." ("Municipal Monopolies," p. 588.)

The same eminent authority has pointed out that in Great Britain, where the companies fear the adoption of

public operation, the average price of gas is only 75 cents, or about half the American price, and at the same time he assures us that there is no reason why the cost of gas should be greater here than in England.

Professor John R. Commons has made a comparison of charges for commercial lights under public and private operation and he assures us that "a comparison of these rates shows that private companies charge for commercial lighting 50 to 100 per cent. more than municipal plants." ("Municipal Monopolies," p. 150.)

The tax which private corporations collect from the people in excessive charges is enormous.

In Boston, an investigation taking place several years ago, showed that the electric lighting companies alone collected a monopoly tax exceeding $800,000 a year. In New York City the tax collected by the electric lighting companies by excessive charges is much larger than this sum. Exorbitant taxes are levied upon the people by the street railways. It is estimated that the cost of operating an electric road in New York City, allowing for taxes, depreciation and including interest on an inflated debt and dividends on watered stock, amounts to about 14 to 16 cents per car mile. A uniform three cent fare, Prof. Parsons estimates, would yield from 15 to 36 cents per car while on the roads. In New York City the uniform five-cent fare, regardless of the distance, is exorbitant and greatly in excess of that charged by other cities. This is made clear from the following table taken from Mr. Parsons' "City for the People."

STREET RAILWAY FARES IN CENTS.

City.	Population.	Workingmen's Rate.	Children's Rate.	General Rate for Short Distance.	Average Fare on Whole Traffic.
Milan	440,000	1.	....	2	1.8
Vienna ...	1,560,000	1.6	....	2	2.7
Berlin	1,800,000	....	....	2½	3
Budapest .	500,000	....	....	2	2.7
London ..	4,000,000	....	....	1	2.5
Belfast ...	256,000	....	....	2	2.2
Glasgow ..	840,000	1	....	1	1.78
Toronto ..	176,000	3	2½	4	4.2
Detroit ...	280,000	....	....	3	3.3
Buffalo ..	360,000	....	3	5	3.6

Under public operation fares are less than under private operation. Thus, in Glasgow, the street railways were acquired in 1894. Under private ownership the average fare was 3.84 cents per passenger, while in 1898, under public ownership, the average fare was 1.84 cents per passenger.

In Toronto school schildren ride for 2½ cents, and in Buffalo for 3 cents. In New York City the private traction companies make no reduction for children.

Over-Capitalization.

By resorting to over-capitalization the public service corporations disguise the enormous dividends which they actually collect. By capitalizing their plant at an amount greatly in excess of its true value and paying dividends

upon it, the corporations plead poverty when expected to pay taxes or give better service to the community.

In the street railway companies the actual value of the plant seldom exceeds the amount of the bonds and the whole issue of stock usually represents "water." Mr. Edward B. Whitney, writing in the *Yale Review,* describes the method to which the public service corporations resort. He says:

"As fast as the street railroad company's or the gas company's or the electrical company's earnings thus increase, its old stock is converted into bonds and new stock issued to represent that increment. The new stock is sold to the public with fabulous profits for the syndicate managers. Legislative regulation of rates is then resisted on the ground that unfortunate stockholders would lose their dividends. The State is put into a dilemma in which it ought not to be—a dilemma between doing justice to the public, who have made the increment, and doing mercy to the ignorant stockholders who have invested their savings in the new stock."

Over-capitalization or stock-watering is a method of swindling which is universal among all public service corporations. When the Manhattan Elevated Railroad took over the franchise of the New York Elevated and Metropolitan Elevated upon 999 years' lease it grossly over-capitalized the new company. In taking over the stock of the old companies, which were largely water, it issued $13,000,000 more watered stock upon this basis. The report of the Railway Commission (1883) declared that this issue of stock was "only a pyramid of water upon a pedestal of transparent fraud."

Poor Service.

Private ownership means not only excessive charges, exorbitant profits and gross over-capitalization, but it means poor service to the public. It is cheaper to carry passengers "on a strap" than to furnish a seat, and it is cheaper to carry them in cars that are not heated than to pay for proper appliances to heat the cars. All the companies operating in New York City encourage "strap passengers" and the Brooklyn Rapid Transit Company, in addition to this, makes a specialty of not heating their cars during the winter months. Many citizens have lost their lives from the exposure to which they have thus been subjected. Modern improvements are not adopted with proper promptness and favoritism is used in the selection of proper safety appliances. Discrimination or secret rebates cannot be prevented while private monopoly in these utilities exist. Public safety, health and convenience are all sacrificed to the supreme consideration of private ownership, viz.: Making private profits. When a public-spirited citizen of Brooklyn pointed out to a high official of the Brooklyn Rapid Transit Company that improvements were necessary for the good of the public, the official told him that he was put in his present position to run the road for the good of the stockholders rather than the public.

Fraud and Corruption.

The franchises under which public service corporations operate were conceived in bribery, fraud and political corruption and their owners have purchased exemption from proper regulation and control by a re-

sort to like methods. They maintain lobbyists at all of the State capitals to protect their interests and to find and avail themselves of every opportunity for making a raid upon the people's rights. They ally themselves with bosses and political rings and exert a powerful political influence, which is always directed to promoting their own interests and against the public welfare. They are active political agencies. In return for favors received from politicians, they allow the politicians to designate certain of their employees. The establishment and improvement of the civil service law has greatly diminished the power of the politician or political machine, because it has to a large extent withdrawn from them the power to assign places to work or "jobs" in the public service. A New York alderman recognized this when he admitted that his opposition to public ownership was that if it was adopted places on the street railways would be subject to civil service rules, and he truly said that the private corporations offered the principal opportunity which politicians had of securing places for their henchmen. Bribery in obtaining franchises and resort to the same methods to retain and extend them, over-capitalization, excessive charges for inferior service and perjured statements to tax assessors, together with low wages to employees and longer hours required of them, are the usual incidents of private ownership of public utilities.

Statutes prescribing the hours of labor upon street railways have been treated by the companies with about as much consideration as would have been given to them if they had never been enacted into law. Rather than pay a slight increase in wages or submit to a slight re-

duction in hours, the street railway companies have frequently subjected the community to the annoyance and inconvenience of a strike.

Antagonism Between Public and Private Interests Under Private Operation.

Such are some of the fruits of private monopoly, and as long as private monopoly is indulged it will continue to produce fruits of a like nature. These evils result, not from the fact that a monopoly exists in the performance of these public services, but from placing these monopolies in private hands. In the performance of these services there can be no competition. Monopoly is cheaper, better, and inevitable. But the monopoly should be placed in public hands and administered by the government in the same manner as other governmental functions are administered. While the monopolies are in private hands there must always exist an antagonism between public and private interests and the private interests favor themselves. Public ownership destroys this antagonism and substitutes for greed and selfishness the desire to serve the public.

Economy Under Public Operation.

The corporations which have been engaged in the operation of these public utilities have demonstrated beyond all question that monopoly minimizes waste. The private consolidations which have been effected, while an economy over the competitive system, have not been as economical as public operation would be.

Private consolidation has only been effected in many instances by assuming the bonded debts and fixed

charges of constituent companies and in some cases by assuming also the stock of the old companies. Under public operation greater economy would be possible. The very large salaries of some of the high officials could be dispensed with and a great saving of legal expenses and attorneys' fees would result. Fair, even liberal, salaries and wages should be paid to those whom the public employ to render these services, but the purely "fancy" sums now paid to some of the officials of the private companies would certainly cease. Money paid to influence legislation and for corruption purposes would also be saved.

Experience Shows the Benefits of Public Operation.

In Glasgow, the second city of Great Britain, the public ownership and operation of public utilities has been thoroughly tried and the result has been in every way satisfactory to the people of that city.

It is sometimes urged that Glasgow cannot be compared with American cities and that, therefore, no inference favorable to public ownership and operation in America should be drawn from Glasgow's success. But results in Glasgow when these utilities were controlled by private corporations can be compared with results secured in the same place under public ownership and operation. The result of municipal ownership in Glasgow of its tramways and gas and electric light plants have been lower rates and fares, better service and increased traffic and higher wages with shorter hours for employees.

In New York City we have municipal ownership and

operation of the water supply and it is a success. The New York City public water system in 1903 produced a revenue to the city of $2,500,000 over and above the expenses of administration, maintenance and operation plus interest charges. To show the net profit, however, there should also be deducted from this amount 1 per cent. of the total amount of outstanding water bonds and corporate stock ($77,000,000) as a provision for sinking fund, leaving as a net income to the city, for the year 1903, of $2,475,000. To this amount should fairly be added the free public water service. At current rates this service several years ago was estimated to be worth at least $600,000 a year. In 1903 it was much larger, but, accepting this estimate as correct, the total net profit to the city from the ownership and operation of its water supply in 1903 amounted to $3,075,000.

In the Boroughs of Manhattan and The Bronx the public are supplied with water from the public plant. In the Borough of Brooklyn the major part of the supply comes from a public plant, but it is supplemented by services from private companies. In the Borough of Queens the public supply is supplemented by water furnished under contract with a private company. In the Borough of Richmond the greater portion of the water supply is derived from local private water companies. Commissioner Monroe in his report for 1903, speaking of the Borough of Richmond, says that "The water is for the most part of poor quality, the rates are high and the service inadequate for needs of the increasing population." The city operates a small pumping station at Tottenville and mains have been laid from this station,

but it supplies only a small section of the Borough of Richmond.

Thus in New York City a comparison is possible between results under public and private operation of the water supply.

If New York City can achieve such splendid results with its public water supply, why could it not be equally successful in the operation of gas or electric plants or its street railways? New York City has had municipal ownership of its water works since 1843. The tendency all over the country is toward the establishment of municipal ownership of water works. In 1800 there were one public plant and 15 private plants. In 1850 there were 33 public plants and 50 private plants. In 1880 there were 293 public plants and 305 private plants. In 1896 there were 1,690 public plants and 1,489 private plants. Or, to state the same proposition by percentages: In 1800 over 93 per cent. of the water works were privately owned. In 1850 over 60 per cent. were privately owned. In 1880 over 51 per cent. were privately owned. In 1896 over 53 per cent. of the water works were publicly owned and operated. (Water Works, by M. M. Baker, Ph. B., "Municipal Monopolies," p. 16.)

The following table taken from Prof. Parsons' "City for the People," gives the cost of Electric Light BEFORE and AFTER Public Ownership:

	Price paid private company per street arc just before public operation began.	Cost per arc, including operating expenses, taxes, insurance, depreciation and interest.	Cost under complete public ownership, including operating expenses, taxes, insurance and depreciation, but not interest, there being no interest to pay when public ownership is complete, i. e., when the people own the plant free of debt.
	BEFORE	AFTER	AFTER
Aurora, Ill.	$325	$72	$61
Elgin, Ill.	228	62	56
Fairfield, Ia.	375	95	80
Marshalltown, Ia.	125	40	30
Bay City, Mich	100	67	58
Detroit, Mich.	132	83	68
Allegheny, Pa.	180	86	75
Bangor, Me.	150	58	48
Lewiston, Me.	182	58	52
Peabody, Mass.	185	73	62

The following contrast, showing the difference in rates charged under private and public ownership, is taken from "The City for the People."

Water and Gas Charges.	Under Private Ownership.	Under Public Ownership.
Ordinary family charge for water:		
Syracuse, N. Y.,	$10	$ 5
Auburn, N. Y.,	8	6
Randolph, N. Y.,	10	4
Average in Indiana,	9 3-4	4 2-3
Average in Illinois,	8	5 1-3
Average in Massachusetts,	7 1-2	5 3-4
Average in Texas,	15 1-5	9 1-4
Average in Washington State,	17	10
Cost of gas per thousand:		
Hamilton, O.,	$ 2	$ 1
Duluth,	2	$1 1-2 and $1
Wakefield,	2 1-5	1 3-4
Fredericksburg,	3	1 1-3
Washington (priv.),	1.25	Richmond (pub.) .70
Pittsburg (priv.),	$1.20 and $1 net.	Wheeling(pub.).75 and .56 net.
Average in Virginia for '91,	2.11	1.17
Average in W. Virginia for '91,	1.80	.50

These tables show in a startling manner the superiority of public over private operation of water, gas and electric lighting plants.

Benefits of Co-Ordination.

Great public benefits result from co-ordination in the operation of different public services. Thus it has frequently been found that water-works and electric light plants can be operated together with advantage to the public. Such co-ordination exists in Aurora, Batavia,

Paris, La Salle and Bloomington, Ill.; Columbus, Goshen and Martinsville, Ind.; Marshalltown, Ia.; Portsmouth, O.; Dunkirk, N. Y., and in other places. Of the twelve cities now operating gas works in this country, Professor Parsons says that "all but four (Richmond, Charlottesville, Fredericksburg and Duluth) have public electric plants also, which are more or less co-ordinated with the gas works. In Duluth the water and gas plant is one institution under a single manager."

Mr. Baker, writing of water works, says:

"Under municipal ownership a harmonious development of this and other public works is possible. Water-mains may be laid before streets are paved, thus saving the damage and expense of tearing up good pavement to lay water-pipes. The health and police departments may easily work with the water department for the public good instead of the water company being continually fearful lest the health board declare its water unsatisfactory, and being too often ready to resist efforts to secure a better supply." ("Municipal Monopolies," p. 46.)

Relief to Taxpayers.

Notwithstanding the lower rates charged the users or consumers and the better service furnished where public utilities are operated by the public, they, nevertheless, make large contributions to the city treasury. The following "Lesson in Municipal Ownership" has been prepared by Mr. C. Augustus Haviland and is reproduced here through his kind permission:

"LESSON IN MUNICIPAL OWNERSHIP FOR TAXPAYERS.

There are many taxpayers who are led to believe that Municipal Ownership will bring burdensome taxation.

The facts as disclosed by the records in Great Britain show directly the reverse, and prove conclusively that the vast sums which are here wrested from the pockets of the people to enrich a few should be turned directly into the treasury of municipalities for the benefit of all the people.

In Great Britain the records of 1904 disclose that in the great cities where Municipal Ownership and Municipal Operation is in force a large percentage of the Municipal Tax is contributed directly through the profits upon Gas, Electric Light and Tramway service.

Here are facts as to some cities in 1904:

Liverpool contributed to the Tax Rate:

From Electric Light profits	$51,499
From Tramway profits	160,405

Manchester contributed:

From Gas profits	300,000
From Tramway profits	255,000

Nottingham contributed:

From Gas profits	103,415
From Electricity	300,000
From Tramways	65,000

Blackpool contributed:

From Gas	74,555
From Electricity	10,000
From Tramways	2,500

Bolton contributed:

From Gas	81,900
From Electricity	22,500
From Tramways	13,700

Belfast contributed:

From Gas	102,900
From Tramways	40,500

Halifax contributed:

From Gas	39,500
From Electricity	12,500

Dewsbury contributed:

From Gas	26,800
From Electricity	5,000

Leeds contributed:

From Gas profits	150,000
From Tramways	275,000

Salford contributed:

From Gas profits	100,000
From Electricity	22,500

Southport contributed:

From Gas profits	56,250
From Electricity	13,750

Burnley contributed:

From Gas profits	35,500
From Electricity	20,500

Birkenhead contributed:

From Gas profits	30,000

Leicester contributed:

From Gas	125,000

Lincoln contributed:

From Gas	12,500

Nelson contributed:
From Gas 20,775
Macclesfield contributed:
From Gas 25,025
Oldham contributed:
From Gas 45,650
Carlisle contributed:
From Gas 34,845
Coventry contributed:
From Gas 10,000
Cardiff contributed:
From Electricity 15,000
Darlington contributed:
From Gas 42,500
Stockport contributed:
From Gas 56,000
West Haven contributed:
From Electricity 40,000
Widnes contributed:
From Gas 81,000
Rochdale contributed:
From Gas 65,000
Kingston-Upon-Hull contributed:
From Tramway profits..... 57,500

With this exhibit from the records of 1904 I respectfully submit that all taxpayers are directly interested in bringing about Municipal Ownership in American cities."

Municipal ownership and operation of gas and electric light plants and tramways are in successful and profitable operation in many of the cities in Great Britain. Two

hundred and fifty-six municipalities in Great Brtain own their own gas plants and furnish gas to all consumers with profit to themselves and at lower rates than are charged in American cities. In 1903 Manchester made a profit for the city of $350,000 while furnishing gas at 66 cents per thousand; Birmingham a net profit of $280,000, and Belfast $103,000 while furnishing gas at 60 cents per thousand. Nottingham made $85,665 profit while charging only 52 cents per thousand. In Great Britain over 155 cities own and operate their own electric plants and there are about 200 other municipalities entering upon the construction of other plants. Speaking of this record, Mr. Haviland says:

"In all the cities operating electric plants the published facts disclose that, while light was being furnished at reduced rates, there was profit in nearly every case to the municipality, some of the profits reaching as high as $500,000 to a single city." (Haviland's "Facts About Municipal Ownership in Great Britain.")

The record of Municipal tramways in Great Britain is equally satisfactory and furnishes an equally convincing argument in favor of municipal ownership and operation.

The Municipal Year Book of 1904 says:

"No branch of municipal enterprise has made such rapid progress during recent years as that relating to tramways. Almost without exception every large town has completely municipalized the tramways or is about to do so. The expiration of tramway companies' leases coincides with the introduction of new methods of traction, and before many years the facilities for rapid transit in our great centres of population will be completely rev-

olutionized. So municipal corporations, anxious to get tramways completely under their control at the earliest possible moment, do not in some cases wait for leases to expire, but buy out the companies on terms which are profitable to the community. It is considered that no tramway service can be of the fullest benefit to the people unless it is operated as well as owned by the municipality. Every town is seeking to introduce electrical or other mechanical traction, and, as in the majority of cases the corporations own the electric lighting supply, the introduction of electric tractions will prove of great advantage, since the combination of the two public services is bound to result in a higher standard of economical working."

In the cities of Great Britain owning and operating their tramways great profits have accrued to the municipality. In 1903 the net profit for this service in Aberdeen was $123,025; in Bolton $192,500; in Glasgow $1,761,795; in Hull $217,020; in Leeds $585,795; in Lewisport $868,070; in Manchester $619,855; in Newcastle $322,545, and in Sheffield $373,830. These net profits were all realized with an average rate of fare per passenger which was less than three cents.

The city of London owns 88 miles of its tramways and of their public operation in that city the Municipal Year Book says:

"Municipal ownership has benefited not only the general body of rate-payers, but also the tramway employees. Both the service and the status of the workmen have been improved. Of the advantages conferred upon London in both directions are the following: Relief of the tax rate through profits of the undertaking, the institu-

tion of all-night car service, the running of workmen's cars at reduced rates, reduced fares for ordinary passengers on many of the principal routes, the removal of advertisements from windows of the cars, the institution of a ten-hour day (or sixty hours per week) for all tramway employees, the recognition of the principle of one day's rest in seven, increased wages for employees, and provision of uniforms for drivers and conductors."

In Holland, Austria, Germany and Great Britain many of the principal cities have established the municipal ownership and operation of the gas and electric light plants and street railways with satisfactory results. In most of the American cities where the principle of municipal ownership and operation of the public utilities has been recognized the same results have followed. Reason and experience, theory and practice, all proclaim the benefits of municipal ownership and operation of public utilities.

Lower Rates and Increased Business.

Municipal ownership and operation means lower rates and lower rates mean increase of business and the extension of the benefits of public service.

In Glasgow the fares upon the street railways were cut one-third under public operation and the business was doubled in about two years.

Of the Brooklyn Bridge Dr. Max West says:

"When the railway fare was cut in two in 1885, the traffic at once more than doubled, and the receipts, instead of falling off, were considerably increased."

With respect to gas, Prof. Bemis has estimated that the proportion of consumers to population was 20 per

cent. larger in cities owning public works than in Massachusetts cities with private works selling at about the same average price.

The record as to water is the same. Prof. Parsons says:

"In 1889 the water commission of Syracuse, N. Y., investigated 250 towns and found that, even when prices were the same, there was a much greater use of water in towns supplied by public works than in towns supplied by private companies. The statistics of the 50 largest cities in the country collected by the eleventh census showed the same."

Characteristics of Private Operation.

Secret rebates, discrimination and favoritism, fraudulent accounts, perjured reports and watered stock—attributes of private ownership and operation—would disappear under municipal ownership and operation. These characteristics do not exist in the New York water-works and there is no reason to suppose that they would be more likely to exist in a municipal lighting plant and with municipal street railways. Those charged with the public administration of these utilities would win distinction and popular favor and advancement in the public service by the elimination of these evils and by the adoption of a progressive attitude in reference to modern improvements and appliances to secure public safety. If the department of the city government charged with the performance of these services permitted these evils to exist or neglected their duties in any respect, such neglect would immediately be obvious to the great mass of citizens who daily use these services and public opinion could cause their speedy correction.

Prof. Parsons sums the matter up well in the following terse sentences:

"Public ownership is not an absolute guarantee of good service, but a public monopoly has at least no interest opposed to good service. A business is apt to be managed in the interests of its owners. If the people own the service they will be more apt to get what they want than under an antagonistic ownership. The servants of the people, with a good civil service, will be more apt to do the people's will than the servants of a company whose will is opposed to the people and who are in the business to get all they can and give no more than they must."

Improved Condition of Labor.

The improved condition of labor under Municipal ownership and operation is one of the great considerations in its favor. The actions of public service corporations in dealing with their employees have been characterized by requiring long hours, violations of labor laws, and the payment of as low wages as possible and the denial of the right of laborers to organize. Under private operation they are subjected to arbitrary and oppressive regulations and are liable to discharge without cause, and provisions for their comfort, health and safety are grossly neglected. Under municipal ownership and operation the very opposite policy would be adopted. Reasonably short hours and reasonably high wages would exist, and the right of the workers to organize would be recognized. Employees upon these public utilities would be subject to and protected by Civil Service provisions. They would be free from removal except for cause and the actions of

those discharging them would be the subject of judicial review.

The great strikes and labor battles which now frequently arise between public service corporations and their employees, which waste the capital of the employers and the time of the employees, causing great inconvenience to the public and frequently resulting in bloodshed, would not exist under municipal ownership and operation. We never hear of a strike in the Post Office, or in the Police or Fire Departments, and if public utilities were owned and operated by the municipality strikes in these public works would be unheard of. In place of the present violent and unsatisfactory tests of endurance between employees and employers, petitions to the proper officials followed by investigation would secure the redress of grievances while protecting the rights of the public. From the decision made by City officials in such cases there would always be a final appeal to the ballot box where the interests of the employees and the public would be awarded at least that decision which the majority of voters believed to be right.

Objections to Municipal Ownership and Operation.

Objections to municipal ownership and operation very naturally come from those who through over-conservatism exaggerate the real difficulties and those who profit by the maintenance of the present system of private ownership. The objection is frequently urged that this new field of public endeavor cannot safely be undertaken until the Civil Service system is more firmly established. If public operation would be otherwise advanta-

geous, this objection furnishes no ground for a failure to adopt it. The Civil Service system has come to stay. Its advantages are too obvious and too thoroughly appreciated for it ever to be done away with. Municipal operation of public utilities should and would be under strict Civil Service safeguards. The Civil Service system has improved slowly as the public have assumed responsibility, and as the responsibility under which all officials acted has become clearer to the public view. If the public can see just where the responsibility lies, in the conduct of public affairs, those under this responsibility will not fail to adhere to Civil Service rules. We shall not approach nearer to a realization of the Civil Service ideal by shirking our immediate responsibilities, but rather by assuming them. The very sensible remarks by Ex-Mayor Josiah Quincy, of Boston, upon "The Development of American Cities" made as to municipal ownership are applicable. He said:

"Any extension of municipal functions must tend to arouse a public interest which cannot but assist in improving administration and hastening the adoption of a strict Civil Service system. * * * We should not, therefore, wait for a perfect municipal organization before we undertake any desirable addition to the service now rendered directly by the city, but should be willing to trust something to the educating and awakening effect of imposing further responsibilities upon a municipal government, and thus bringing it into a new and close relation with the citizens." (The *Arena,* March, 1897, Vol. XVII, No. 88.)

It is sometimes urged, even by the friends of New York City's most unprogressive street railways, that

public operation would be less progressive and that improvement under it would be less than exists under private operation. This view rests upon the belief that private capital takes risks in the introduction of new improvements and in experiments which the public could not and would not take. There is, however, no reason to believe that this is so, and experience under public operation has demonstrated that it is not true. The officials having charge of the operation of these great public utilities should be and probably would be allowed a certain part of the profits resulting from public ownership and operation for the purpose of experiment and improvement. Private corporations have been slow to introduce improvements or to expend money in making necessary experiments because such expenditures would reduce the dividends upon their stock. Public officials would not be deterred by these considerations. Indeed, it is sometimes urged by opponents of municipal operation that public officials would be too reckless in such expenditures. Under public operation the officials charged with the duties of administration would not be deterred from making such improvements by fear of personal loss and could be prevented from expending too great a sum for these purposes by legal prohibition. We are sometimes told that the city cannot operate such public monopolies successfully. It should never be forgotten in considering this question that ownership and operation are distinct and different propositions. To-day those who own the gas and electric lighting plants and the street railways do not operate them personally, and in many cases they do not even direct the manner in which they are operated. The sole task of many of the

owners of these privileges is to receive the dividends or interest upon their stocks and bonds. These public utilities are operated by the salaried employees of the owners. If the employees of private owners can successfully operate these public utilities, it is difficult to discover any reason why the employees of the public cannot operate them with equal success. There are some persons who, while not opposing the principle of municipal ownership and operation as applied to these public utilities, hesitate to advocate it because they fear that under it fraud and political corruption would increase. There is no reason to believe in the present condition of our politics that fraud and political corruption would cease altogether from our politics merely because these public utilities were owned and operated by the public. But there is very good reason to believe that they would be greatly diminished. The existing relations between our city government and public franchise-owning corporations are far from being free from political corruption. Upon this aspect of the question the opinion of those who have given the problems of municipal government special study are worthy of the greatest consideration. Mr. Josiah Quincy says:

"The power now necessarily wielded by the great corporations which control such branches of public service as lighting and transportation often gives them too great an influence over municipal government. It has been said that the government must either control the corporations or be controlled by them. Without fully accepting this sweeping declaration, it must be admitted that there have been many cases in our American cities where corporations have practically dictated the actions

of city councils. Their influence over nominations and elections where they chose to exert it, may often be a determining one. Even a corporation holding a municipal franchise that has nothing further to ask of the city, and only desires to be allowed to prosecute its business without interference, is often drawn into municipal politics by the skilfully planned attacks of politicians who have purposes of their own in view. In short, the connection between quasi-public corporations and the city is necessarily so close that corporate interests are bound to make themselves powerfully felt at times, both by their command of capital and by their influence over large numbers of employees. (The *Arena* March, 1897, Vol. XVII, No. 81.)

Governor Pingree of Michigan, whose long battle with the traction companies qualified him to speak, said:

"Good municipal government is an impossibility while valuable franchises are to be had and can be obtained by corrupt use of money in bribing public servants. * * * I believe the time has come for municipal ownership of street railway lines, water, gas, electric lighting, telephone and other necessary public conveniences, which by their nature are monopolies."

Prof. Parsons gives his valuable testimony to the same effect. He says:

"In studying the effects of public electric works I have found many instances in which the purification of municipal politics was clearly aided by the change to public ownership. And Prof. Bemis, after examining the history of the gas works in Philadelphia, Richmond, Wheeling and all the other cities having public works in 1891, declared that experience in every one of these cities, not excepting Philadelphia, had shown that public

ownership tends to diminish political corruption."

Prof. Commons says:

"I maintain that nine-tenths of the existing municipal corruption and inefficiency result from the policy of leaving municipal functions to private parties; and that an essential part of the present unparalleled awakening of civic conscience on the part of all classes of the people is the desire for municipal ownership of franchises. As the people become aroused to the degradation of their politics and to the need of reform their attention is concentrated on the chief source of that degradation, the underhanded and the high-handed domination of city officials and machine politics by the corporations whose life is maintained by city franchises."

Dr. Albert Shaw says:

"The pressure that would be brought to bear on the government to produce corruption under municipal ownership of monopolies like gas, electric light, transit, etc., would be incomparably less than the pressure which is now brought to bear by the corporations."

Prof. Ely says:

"Our terrible corruption in cities dates from the rise of private corporations in control of natural monopolies, and when we abolish these we do away with the chief cause of corruption. 'But,' it is said, 'we must take natural monopolies out of politics.' It never has been done, and it is an impossible thing to do—absolutely impossible. No gas works, no water works, no street car lines, no steam railroads, are as thoroughly in politics as those in the United States. Our American railroads are incomparably more in 'politics' than the German railroads. Not only this; those German railroads which

have been bought by the State, I believe, are less in politics than they were when they were private property * * * I unhesitatingly advocate public ownership and management for gas works and I challenge anyone to instance a single American city—or, for that matter, any city, wheresoever situated—which has gone over to public ownership and which regrets it; which, indeed, has not found that a corrupt political influence was thereby removed and political life purified."

There is every reason to believe that municipal ownership and operation of public utilities would mean a great cleansing of our municipalities. City governments as they are at present constituted are by no means free from corruption, it is true, but neither is the management of private corporations. Public officials are sometimes guilty of favoritism and award responsible positions to incompetent relations and friends, but private corporations pursue the same policy. The people can trust their own public officials better than they can trust the paid officials of a corporation operating for private gain whose interest is antagonistic to the interest of the public. The public official would at all times be subject to a public scrutiny which is not possible as to the officials of a private corporation.

As the chief newspapers of our cities frequently denounce with great vehemence the principle of public ownership and operation and those who advocate it, the following extract is interesting as throwing some light upon their relations to the great public service corporations. Mr. Henry Doherty, of the Columbus, Ohio, Gas Company, in an address before the twentieth annual

meeting of the Ohio Gas Light Association, at Cincinnati, March 18, 1896, said:

"Keep the newspapers on your staff, also the city authorities. Now how to do this is sometimes a problem. * * * Say you would go to the managers and proprietors of your newspapers with such a proposition as this: 'I have a few shares of stock to sell you on the following terms; I will take your note, secured by endorsing the stock over to me, with interest at a rate less than the earning capacity of the stock, with the privilege of paying it at any time, upon giving sixty days' notice.' *To be brief, it should be our business to-day to keep the stock of our companies distributed among those who are in a position to promote the welfare of our business.*" (Quoted by Prof. Bemis in "Municipal Monopolies," p. 659.)

By the retention, acquirement or resumption of public franchises and the ownership and operation of public utilities, the city's wealth is greatly increased and the city is made stronger for every good work.

CHAPTER IX.

Legal Methods by Which the City May Acquire and Operate Its Public Utilities.

Having determined that it is desirable that the city should own and operate its gas and electric lighting plants and street railways, the question naturally presents itself as to the legal power of the city and the methods and means by which it can acquire and operate these public utilities. That public franchises while in private hands are private property is no longer open to discussion, and, like all other private property rights, they may be taken by the State or cities when authorized, for a public use by the exercise of the police power, the power of taxation or the power of eminent domain (People ex rel. vs. The Mayor of Brooklyn, 4 N. Y., 419).

The City's Powers—Home Rule.

A city or municipal corporation is the creature of the State and it possesses only those powers which are specifically conferred upon it or are necessarily implied from those powers which are specifically granted.

The city of New York enjoys but a small measure of Home Rule. The Legislature has for many years past regarded New York City simply as a subject province to be plundered. Acting upon this principle self-government has been denied to the city and it has been subjected to oppressive and tyrannical regulations.

The city of New York will never enjoy true Home Rule or self-government until the State Constitution is so amended as to guarantee Home Rule to the cities of the State. At present even where the Legislature has con-

ferred powers upon the city, these powers are liable to be withdrawn at any time by the same power that originally conferred them.

Even under present laws the city of New York enjoys large police powers for the enforcement of police and health regulations. It would seem that furnishing light and decent transportation for the people of the city is an absolute necessity upon which the health and safety of the inhabitants of the city is dependent. This much would probably be admitted by all, but the contention is made that these powers can lawfully be performed by private corporations only. If the city can confer the power to perform these public functions upon private corporations, it is difficult to understand why it cannot itself perform them. If New York City owns the streets and highways as trustee for all the people of the State and can confer the power upon a railroad corporation to lay tracks and run cars, why should not the city itself be empowered to perform this function for the benefit of the whole people? The street or highway does not lose its public character by reason of a street railroad being operated in it. Indeed, its efficiency or effectiveness as a highway is increased by reason of its being put to this use. If the city of New York is the owner of the sub-surface of the streets in trust for the use of the people of the State, and can, through the Rapid Transit Commission, build and then grant the right to private corporations to operate railroads under the streets, why should it not be able to reap the fruits of its ownership and operate such railways for the good of its citizens? It is an old and true saying that "property without use is an empty sound." To hold that the city owns the streets

whether on, over or under the surface, but that it cannot use its property is to deny to the city its right of property. For the city to be said to own the the roads and rights of way which are built by the money of its taxpayers and for it to be obliged to turn over the use of this valuable property to private corporations is absolutely absurd. That the people of New York City are so foolish and careless of their own interests as to permit this would be amusing if it were not so deplorable. It is perfectly evident that the anomalous and ridiculous condition of the law which permits this situation to exist has been brought about by the public service corporations. While the people have been attending to their own private affairs and neglecting their public duties the corporations have written their laws for them.

There are no decisions of the courts in this State bearing directly upon the question as to whether the right of the city to furnish light and decent transportation can be exercised where no special statutory authority has been conferred. There is, however, a decision from the highest court of Indiana which fully sustains this view. In the case of the City of Crawfordsville vs. Braden, 130 Ind., 149, the Court considered this whole question.

In this case it was held that the police power primarily inheres in the State, but that the Legislature may delegate at least a part of it to Municipal corporations either in express terms or by implication arising from the fact of the creation of a city. It was also held that the power to light the streets and public places of a city is one of its implied and inherent powers, necessary to properly protect the lives and property of its inhabitants and as a check on immorality, and that no statute was necessary

to give it this power. The court further held that the power to light the city carries with it incidentally the further power to procure or furnish whatever is necessary for the production and dissemination of the light, and that a city has the power to establish works for lighting its streets and may in connection therewith furnish private consumers such light by contract.

It is, however, unfortunately true that the courts do not always take so favorable a view of the public rights. While it is well to bear in mind the police power of the city in dealing with the public service corporations, it would hardly be safe to rely solely upon this implied power to justify the right of the city to own and operate its own public utilities. It becomes important, therefore, to inquire as to what specific powers in this respect have been conferred upon the city of New York by the State Legislature.

A Municipal as Distinguished from a Public Lighting Plant.

In considering the question of public lighting, a distinction must be observed between the municipal operaton of a lighting plant for the sole purpose of lighting the streets, public highways and other public places and a municipal lighting plant which shall have power to do this and also to furnish light, heat and power to all the consumers within its limits. The first plan is not real municipal ownership and operation; though it is sometimes so claimed to sidetrack the movement for true municipal ownership and operation. If the lighting companies now furnish good light at reasonable prices and do not rob the consumer, there is no reason for a public

plant of any description. If, on the other hand, the companies furnish inferior light at unreasonably high prices and do rob the consumer, then a method which prevents this imposition only upon the city while permitting it to continue as to all the people in the city is wholly inadequate as a remedy. The suggestion that a municipal lighting plant is needed for *municipal purposes* but not for *public purposes* admits the necessity of relief from the extortion of the Lighting Trust. A municipal lighting plant operated solely for municipal purposes, and not for public purposes would be conducted under the most disadvantageous circumstances possible. Manifestly when such a plant is once established its success will depend largely upon the volume of business which it is able to transact. To prohibit such a plant from supplying the public is to withhold opportunities for profit from it and to deny the public relief from the extortion practiced by the lighting companies. The suggestion for the establishment of a municipal lighting plant which shall not be permitted to serve the public, comes, as might naturally be expected, only from those who are hostile to municipal ownership and operation of public utilities. This is the policy of those now controlling the present administration in New York City. No one has given it clearer expression than Mayor McClellan himself.

Speaking of Municipal Ownership, he said:

"I am in favor of Municipal Ownership and operation of an electric lighting plant to light the streets, parks and public buildings of New York. I do not believe that government should engage in any services that can be done better or as well by private enterprise, or should

invade business fields in competition with the legitimate trade of the citizen."

The Mayor of the city, therefore, apparently labors under the impression that the performance of these public utilities upon which the health and welfare of the whole people depends is a part of "the legitimate trade of the citizen." The Lighting Trust and the street railways labor under the same impression. As both the corporations and the city authorities are in entire agreement and hold the same view, the public cannot at present expect any relief from either. Nor will any relief be had until the principle is clearly recognized and applied that the performance of these public services is in the highest sense *public and not private business.*

The project for a municipal but not a public lighting plant need not be further discussed. It is merely a political expedient brought forward to prevent consideration of real municipal ownership and operation and in the vain hope that its advocacy will deceive the public.

The City's Rights When Franchises Have Expired.

When the charter prescribes the term of the existence of the franchise and the term has expired the franchise ceases to exist. The dissolution in such cases need not be judicially declared; it is decreed by the power granting the franchise. The limited time of existence having expired the franchise is *de facto* dead. (Sturges vs. Vanderbilt, 73 N. Y., 384, 390.)

The Greater New York Charter in Section 73 goes further than this. It not only declares that such franchise rights shall at the termination of the period for

which they were granted cease without compensation, but specific power is conferred upon the city to operate under such expired franchises or to lease them for limited periods.

Section 73 of the Greater New York Charter provides as follows:—"At the termination of any franchise or right granted by the Board of Aldermen all the rights or property of the grantee in the streets, avenues, waters, rivers, parkways and highways shall cease without compensation. Every such grant of a franchise and every contract made by the city in pursuance thereof may provide that upon the termination of the franchise or right granted by the Board of Aldermen the plant of the grantee with its appurtenances shall thereupon be and become the property of the city without further or other compensation to the grantee; or such grant and contract may provide that upon such termination there shall be a fair valuation of the property which shall be and become the property of the city on the termination of the contract on paying the grantee such valuation. If by virtue of the grant or contract the plant is to become the city's without money payment therefor, the city shall have the option either to take and operate said property on its own account or to lease the same for a term not exceeding twenty years. If the original grant shall provide that the city shall make payment for the plant and property excluding any value derived from the purchase; and if the city shall make payment for such plant it shall in that event have the option either to operate the plant and property on its own account or to lease the said plant and property and the right to the use of the streets and public places in connection therewith for limited periods

in the same or similar manner as it leases the ferries or docks."

The Lighting Situation.

Applying this section to the existing situation and franchises of the lighting companies, the course which the city should pursue becomes perfectly clear and plain.

So far as the Gas Companies are concerned, nearly all of the franchises under which these companies operate have expired and those that have not will shortly expire. The gas companies have no rights in the streets of the city. The Greater New York Charter distinctly declares that "at the termination of any franchise or right granted by the Board of Aldermen all the rights or property of the grantee in the streets, avenues, waters, rivers, parkways and highways *shall cease without compensation.*"

The city is not, therefore, obstructed in the course which it should pursue by the necessity of buying out at greatly inflated prices the franchises of the gas companies. As to them, at least the road is perfectly clear and unobstructed. The existing law permits the city to take one of two courses. If the plant which the gas company has, exclusive of its franchise, is worth having, the city may purchase it upon payment of a "just compensation," or, if it is not worth purchasing, the city may construct an entirely new plant.

If under the grant or contract by which the franchise was conferred the plant is to become the city's without money payment therefor, the city shall have the option either to take and operate said property on its own ac-

count or to lease the same for a term not exceeding twenty years.

Where the franchise does not make provision for payment by the city for the plant, the franchise rights "shall cease without compensation," and in such case the power is clearly and explicitly conferred upon the city "*either to take and operate the said property on its own account* or to lease the same for a term not exceeding twenty years." No more complete or comprehensive grant of power than that which exists is necessary to enable the city to operate a gas plant where it is not required to buy existing plants because of the expiration of gas franchises.

When the original grant provides that the city "shall make payment for the plant and property," the statute clearly prescribes that "if the city shall make payment for such plant it shall in that event have the option either to operate the plant and property on its own account or to lease the said plant and property."

The present status of the city, therefore, is plain. If the franchises of the gas companies that have expired, or which will shortly expire, do not require the city to buy existing plants, the city may itself operate or lease the right to operate.

If the franchises of the gas companies do require the city to buy existing plants at the expiration of the franchise grants, the city may, upon making such purchase, itself operate or lease.

In any event, no matter what the franchise may provide, inasmuch as they have all expired or will soon expire, so far as supplying gas is concerned, the city has the option either to lease the right thus granting new franchises, or it may operate a gas plant itself.

The Stevens' Committee Bills.

In considering the present status of the city in reference to the lighting monopoly, it is necessary to consider the bills that were recommended by the Stevens Committee as the result of its investigation and the legislation which has resulted from these recommendations.

The committee recommended and the Legislature enacted laws fixing the price of electric current for heat, light and power purposes in the Boroughs of Manhattan and Brooklyn and in that part of the Borough of The Bronx west of the Bronx River, at a maximum of ten cents per kilowatt hour of current actually consumed; and fixing the price of arc lamps for street lighting in the city of New York at $100 per lamp per year for single arc lamps of 2,000 candle-power, consuming 450 watts at the arc, and that the price of twin arc lamps, consuming 250 watts each at the arc, should be fixed at $65 each per year.

It was also recommended and enacted by the Legislature that the city of New York be given authority to utilize water power, now owned or hereafter acquired by it, for the purpose of generating electric current for the use of the municipality, "provided that no additional water shall be used for said purpose than would otherwise be required by the city of New York." This last provision seriously affects the power of the city and is a most unfortunate piece of legislation.

A bill was also recommended which became a law creating a State Commission composed of appointees of the Governor and conferring comprehensive powers for the purpose of regulating and controlling the gas and electric lighting companies.

In reference to this bill the committee in their report say that:

"The plan of providing a commission paid by the State and invested with ample power has worked most satisfactorily in other States, and there is every reason to believe that a similar plan put in operation here will prevent a recurrence of the mischiefs revealed in this investigation."

That the committee in entertaining this belief labored under a delusion is sufficiently apparent from the experience of other States. Instead of this plan having worked satisfactorily in other States, as the committee assert, it has been an utter failure so far as exerting real control over the companies. This conclusively appears in the work of the Massachusetts Gas Commission, which has already been discussed. This law is objectionable also in that it violates the city's right of Home Rule, by creating a State Commission to regulate matters which ought to be in the control of the city. It creates a large amount of political patronage for the political party controlling the State government. It is difficult to understand how any class in the community, except the beneficiaries of the political patronage, will derive any benefit from it. So far as the commission controlling or regulating the lighting companies is concerned, the bill will be a failure. It is much more probable that the lighting companies will control and regulate the commission than that the commission will control and regulate the lighting companies. That the lighting companies do not take this law very seriously was evident from the fact that they made but little opposition to it and that the price of the stocks of the companies rose in the market

as soon as it was known that the bill had become a law.

This law contains one provision which is positively vicious. That provision enacts that:

"No municipality shall build, maintain and operate for other than municipal purposes any works or systems for the manufacture and supplying of gas and electricity for lighting purposes without a certificate of authority granted by the commission upon satisfactory evidence that the municipality is not at the time adequately supplied with gas and electricity or that the existing supply thereof is improper and not of the required standard, or that provisions have been made as provided by law for the acquisition of existing works or systems."

It would seem that this provision was designed to make the city's rights subject to the action of the commission. It will be noticed, however, that it does not repeal any existing law which confers power upon the city, but merely makes it necessary to obtain a certificate of authority from the commission. It would seem, however that the commission would not have the right to refuse such certificate in any one of the three cases specified in this section.

Thus if it could be shown by satisfactory evidence that (1) the city was not adequately supplied with gas or electricity or (2) that the existing supply was improper and not of the required standard or (3) that provisions have been made as provided by law for the acquisition of existing works or systems, the commission could probably be compelled to grant such certificate. Certainly if satisfactory evidence of either of these three conditions should be presented, the Board could not arbitrarily refuse to issue its certificate. If it should attempt to do

so, doubtless the courts in a proper case could compel the commission to issue it. There is little doubt as long as light is supplied by private corporations that the first and second conditions specified could be established by satisfactory proof. It is worthy of notice also that the certificate may issue when "provisions have been made as provided by law for the acquisition of existing works or systems." Such provisions have been specifically provided by law in Section 73 of the Greater New York Charter, and this provision is in no way repealed or modified by this new law. Thus the right of the city to operate under the franchises specified in Section 73 is in no way impaired, although, perhaps, additional conditions must be complied with on account of this very objectionable provision of this new law.

The chief recommendation of the committee was that the price of gas sold in the Boroughs of Manhattan and Brooklyn and in that part of the Borough of The Bronx west of the Bronx River, should be fixed at a maximum of seventy-five cents per thousand cubic feet. Notwithstanding this recommendation that the maximum price be fixed at 75 cents, the bill which was introduced fixed 80 cents as the maximum. This bill aroused the active opposition of the gas companies. Indeed, it was the only bill recommended that they were seriously opposed to, and this bill they succeeded in defeating. The nonpartisan action of the Legislature upon this bill is worthy of special attention. The bill was defeated by a combination of the Republicans and Democrats. It was the same kind of a combination that the traction companies effected to defeat the Elsberg bill, to which reference has already been made. It is useless to discuss whether

the Republican party or the Democrat party is most to blame for the defeat of this bill. The Republicans had a large majority and could have passed the bill if they had so desired, but the actual vote cast shows that the votes of five Democratic Senators from New York City actually defeated the bill. The sincerity of these Democratic statesmen will at once be perceivd when it is recalled that in the early part of the session, when it seemed that no gas bill at all would pass, and they were anxious to place their Republican friends in a "hole," they had introduced bills fixing the price of gas at 60, 70 and 75 cents and had loudly denounced the plan to fix 80 cents as the maximum. Yet when the opportunity to vote came, Republicans and Democrats combined to defeat the 80 cent gas bill and to continue the present rate of $1. There are a few people in the community of suspicious natures, who, in contemplating the action of the Legislature upon this bill, have been so uncharitable as to suppose that the gas trust may not have used absolutely honest methods in effecting the defeat of this bill.

The Street Railway Situation.

As to the street railways of the city whether they be over the streets, as the elevated roads, or on the streets, as the surface roads, or under the streets, as the subway, the whole matter is, under existing law, exclusively within the jurisdiction of the Rapid Transit Commission. The Commission has power to grant franchises or to contract for the constructon of new roads and to lease them to private corporations. It is without power to

operate them on behalf of the city. We have already seen that the Elsberg bill, which sought merely to confer power upon the city to operate them if advantageous terms could not be obtained from the corporations, was opposed by the Rapid Transit Commission and failed of becoming a law.

Before any step can be taken toward the public ownership and operation either of existing street railways or those that are to be built, legislation is absolutely necessary except where existing franchises shall expire. When they do expire, then it would seem clear that under Section 73 of the Greater New York Charter the city would have the option of leasing or itself operating under such franchises.

As many of the existing surface and elevated railroad franchises still have long terms to run, the present condition of the law as to these franchises is, so far as the city's interests are concerned, unsatisfactory.

It is obvious that an enabling statute should be passed by the Legislature which would in clear and comprehensive terms confer upon the city complete home rule as to the acquirement and operation of its street railways and all other public utilities when the adoption of that policy shall seem to be wise.

The city has, however, a more vital and immediate interest in the disposition that is to be made of the new subway franchises. Even if the city had complete power to acquire existing street railways upon payment of just compensation to their present owners, it would clearly be better for the city first to build and successfully operate its new subway railroads than for it to commence by acquiring the franchises of existing companies. If

the new subways could be laid out with a view solely of promoting the interests of the city and not of strengthening and benefiting private corporations, it is obvious that the city would hold the position of greatest advantage. The existing franchise owning corporations would be at the mercy of the city instead of the city being placed in a position where it must look to them for mercy. With the city owning and operating a great system of subway railroads, it is clear that when it was ready to acquire existing street surface and elevated railroad franchises it could easily do so upon terms advantageous to the city. If the city shall retain the ownership of its present rights in *underground* New York and properly develop them, the railroad corporations will not long be able to compete with it.

If the city's rights are to be preserved, action must speedily be taken, because, with the authority now vested by law in the Rapid Transit Commission, this commission has power to completely foreclose the people's rights in this vast territory and to surrender them for long terms of years or in perpetuity to private corporations.

All that the city of New York needs to permit it to retain these valuable privileges and to receive the benefits that would come from their public operation is legislation which shall confer power upon the city to operate for its own benefit the new subways that are to be built.

Until such legislation is enacted as will confer this power to operate upon the city, it is clear that the Rapid Transit Commission should lay out a comprehensive system of subway lines, which, while connecting with existing lines, should at the same time be capable of in-

dependent operation, so that if existing companies refuse to accept them on the city's terms, they could be leased to competitors or ultimately be operated by the city. The Rapid Transit Commission have adopted the very opposite policy. Thus where routes are laid out in the interests of private companies, the city is entirely at the mercy of these companies, whereas if general plans in the public interest were laid out, the traction companies would be entirely dependent upon the city. The new subways should be planned and built in the manner indicated and until the city acquires the right to retain and operate them they should only be leased for short terms upon adequate compensation to the city, with the right reserved to the city to terminate the lease at its option upon payment of an indemnity. By this method the city would preserve an effective control over the subways while they are in private hands and as soon as the city became legally and financially able to acquire them for public operation it could do so without unreasonable expense. Such a policy would keep the whole of underground New York under the ownership and control of the city. It would make every existing street railroad company operating in the city dependent upon the city, which could dictate terms to it. The future of the gas and electrical supply of the city will be dependent largely upon the pipe galleries which are to be constructed in connection with the future transit subways. The importance to the city of the present position which it holds cannot be overestimated. By insisting upon its present position, the city may secure its rights for all time to come, or by surrendering them and continuing the practice pursued by the Rapid Transit Commission

of laying out new routes in the interest of private companies it may be foreclosed of these rights. The whole matter is within the jurisdiction of the Rapid Transit Commission. That Commission has absolute power, subject, however, to its obtaining the consent of the "local authorities" of the City of New York. Until 1905 a majority vote of the Board of Aldermen and the approval of the Mayor and in case of the failure of the Mayor to approve, then a two-thirds vote of the Board of Aldermen was deemed to be "the consent of the local authorities of such city." During the last session of the Legislature the Rapid Transit Act was so amended as to constitute the Board of Estimate and Apportionment in the City of New York the local authorities, and to make the plans and conclusions of the Rapid Transit Commission subject to the approval of this Board. The Board of Estimate and Apportionment consists of the Mayor, Comptroller, President of the Board of Aldermen and the five Borough Presidents. All of these officials are to be elected at the next city election for a term of four years. Thus it will be seen that the whole matter is practically in the control of the people of the city and that they have it within their power to conserve the city's rights to its franchise wealth and to insist upon the proper operation of its public utilities, or they may permit the surrender of this wealth to private corporations and continue to suffer from the extortion and poor service which they have heretofore experienced.

Perhaps the best remedy that could be applied would be abolition of the present Rapid Transit Commission and the vesting in a local board responsible to the people of the city of the powers now enjoyed by the Commis-

sion, together with the right to operate such railroads. It is entirely true that questions of rapid transit ought to be administered by experts and that continuity of service is conducive to securing greater efficiency. But this benefit would be equally available by the creation of a local board which was responsible either directly or indirectly to the people.

When the power to acquire public franchises or other property exists in the city, the present laws requiring the payment of just compensation and prescribing the manner in which condemnation proceedings are to be conducted are sufficiently comprehensive to permit the city to proceed under them to acquire its public utilities. The exercise of the right of eminent domain entails no hardship or injustice upon either the city or the corporations whose property rights are thus taken. In every case the city would be required to pay "just compensation," and if the corporations received this measure of compensation no injustice could be done to them.

Methods of Securing Ownership and Operation.

Where the city has power to operate public utilities it may either pay for the acquirement of existing franchises and plants, or it may raise the money necessary for the construction and operation of new lighting plants or railroads.

This may be done by pledging the city's credit by issuing bonds or by the sale of public service certificates which shall be secured by a mortgage upon the plant for the acquirement, or construction and operation of which the certificates were issued.

Both of these methods should be carefully considered

and both are safe and practical means of accomplishing public ownership and operation of public utilities. The manner of raising the money necessary to acquire, construct or operate public utilities is the question about which there exists the greatest confusion of thought and upon which many base their opposition to municipal ownership and operation. This is essentially the business aspect of the question which must be thoroughly understood and appreciated before we can expect that the cause of municipal ownership and operation will be generally accepted. The profitableness of publicly owning and operating public utilities has already been demonstrated and the means by which the necessary funds can with safety to the city be raised so as to permit the city to avail itself of these opportunities for profit can be demonstrated with equal clearness.

First—Pledging the City's Credit by the Sale of Bonds.

Under existing law the city has the power to issue bonds and to incur indebtedness for "City Purposes" to the extent of ten per cent. of the assessed value of its real estate.

Article 8, Section 10 of the State Constitution, provides as follows:

"No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last

assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided."

Two limitations are placed upon the borrowing power or capacity of the city. First, that the purpose for which the city raises the money shall be a "City Purpose," and, secondly, that it shall not borrow in excess of or beyond its "debt limit." Both of these terms must be clearly understood. It is necessary, therefore, to define what is a "City Purpose" and the nature and meaning of the city's "debt limit."

What comes within the designation of a "City Purpose" has been already defined by the courts of the State.

What Is a City Purpose?

The question as to what is properly a City Purpose was fully discussed in the case of Sun Publishing Assn. vs. The Mayor, etc. (8 App. Div., 230 and 152 N. Y., 251).

The question before the court was whether a rapid transit railroad, wholly within the limits of a city, was a city purpose. Judge Haight in rendering the opinion of the Court of Appeals made it perfectly clear that a railroad owned by the city is a city purpose. He said:

"Common highways are clearly within the provisions of the constitution for a 'city purpose.' Railroads, as we have shown, are highways, and constructed for the same purpose as the common highways. They are necessary for the common welfare of the people, required for their use, public in character and authorized

by the Legislature, and when constructed and owned by the city are for a 'city purpose' within the meaning of the constitution."

It has also been held that the moneys which were used in acquiring the New York and Brooklyn Bridge property were expended for a "city purpose." (People ex. rel. Murphy vs. Kelly, 76 N. Y., 475.)

In the case of Hequemsbourg vs. City of Dunkirk (49 Hun, 553), the Board of Water Commissioners of the City of Dunkirk were authorized to supply not only the city, *but its inhabitants* with electric light. This was held to be a "city purpose" within the provisions of the constitution. The rule was laid down that the municipality was not limited to the mere duty to supply the city with light, but that it might, "in its discretion, in connection with lighting the streets," also supply citizens with light in their private dwellings. "Numerous cases," said the court, "have arisen in which large and extensive water works had been established for the purpose of supplying cities and villages with pure and wholesome water. In such cases water has been furnished to private consumers at fixed rates, and the power to do this has been sanctioned by the courts and are properly exercised by the municipal government, pure and wholesome water being recognized as necessary to preserve the public health. And in various cities gas works have been established in which light has been supplied by the municipality to private residences at a fixed charge, as well as used for lighting of the streets." (Citing Dillon on Municipal Corp., s. 27; Wheeler vs. Philadelphia, 77 Penn. St., 338; Western Saving Fund Society vs. City of Philadelphia, 31 id., 175; Lehigh Water Co.'s Appeal, 102 id., 515.)

The case cited from 77 Penn. St., 338, clearly lays down the rule that the municipal corporation is not limited to acts within the line of its necessary duty to its citizens.

"While it is no part," said the court, "of the ordinary and necessary duties of a municipal corporation to supply its citizens with gas and water, it is, nevertheless, true that it may lawfully do so."

From these decisions there is no doubt that the operation of gas and electric lighting plants and street railways by the municipality is a "city purpose," within the meaning of that term as it is used in the constitution.

The "Debt Limit."

Under the State Constitution (Art. 8, Sec. 10) the city cannot issue bonds or incur any debt in excess of ten per cent. of the assessed value of the taxable real estate within the municipality. Thus if the city incurs a small debt to acquire a very valuable income producing property, the borrowing capacity of the city is less than before it increased its assets. By our present method of financiering our assets are charged against us as liabilities. Thus the borrowing capacity of the city is unreasonably limited and the city is thereby prevented from making expenditures for many necessary municipal improvements. All of the city's income producing properties, even though acquired by the issue of bonds, ought to be counted as assets rather than reckoned as debts and the bonds issued to secure them ought not to be included in the city's debt limit. Thus, although last year the receipts of the city from water rates produced a net profit of about $2,500,000, the bonds that were issued

to pay for the water supply system impaired the borrowing capacity of the city and were charged against its credit. So, also, with the dock property owned by the city. Although it yields a net profit to the city, the bonds issued for its improvement impair the city's borrowing capacity.

A constitutional amendment should be adopted which would change this anomalous condition and discriminate properly between the city's assets and its debts. All bonds issued to acquire properties which produce profit and revenue for the city should be excepted from the debt limit. At the next election, in November, 1905, a proposed constitutional amendment will be submitted to the people excepting from the debt limit all water bonds of the city of New York issued after January 1, 1904. This amendment should be adopted and it will to some extent increase the city's borrowing capacity. It will give the city a somewhat larger margin of credit upon which it can draw for the construction of necessary public improvements than it at present possesses.

Even under the existing law, unfair to the city as it is, the debt limit has not yet been reached. Within the existing margin, therefore, the city is entirely free to borrow money for the purpose of constructing and operating a gas plant, or for the acquirement of existing plants wherever the gas franchises have expired, or for the increase of transit facilities.

The condition of the city's finances in relation to its borrowing capacity or margin for incurring indebtedness on October 1st, 1904, was as follows:

Ten per cent. of the assessed valuation
of real estate for the year 1904..... $501,546,377.90

Net funded debt (excluding county indebtedness)	$358,442,858.90	
Net contract liability (including Rapid Transit construction, Manhattan and The Bronx, originally as $35,000,000 and extra work amounting to $4,500,000. Brooklyn-Manhattan as $2,000,000).	43,072,393.41	
Liability for lands acquired	11,174,398.59	
Liability for judgments (estimated)	2,000,000.00	414,689,650.90
Margin or excess of ten per cent. of assessed valuation over debt		86,856,727.00
From this margin or excess must be deducted Revenue Bonds of 1902 issued in 1903, outstanding Oct. 1, 1904		530,000.00
Balance of excess of ten per cent. of assessed valuation over debt		$86,326,727.00

This balance at the present time is probably somewhat less than it was October 1st, 1904. In round numbers, it is estimated that on April 1st, 1905, the balance of excess of ten per cent. of assessed valuation over debt was at least over $75,000,000.

It is estimated that the normal increase per annum of the city's borrowing capacity will be between $30,-

000,000 and $35,000,000 and that the obligations which will necessarily be issued for ordinary requirements can be kept within this limit. If this is done, this margin will be available for public works, such as water supply, rapid transit, or the establishment of a lighting plant.

Second—Issuing Public Service Certificates.

Although the city would be perfectly safe in pledging its credit within the limits prescribed by the constitution for the construction, acquirement and operation of its public utilities, there is a much less difficult and more satisfactory way of raising the money necessary for this purpose. The city should be empowered as the city of Chicago has been empowered in respect to its street railways, to issue and to sell to private persons or corporations, interest bearing public service certificates in order to raise money for the acquirement, construction and operation of its public utilities. These public service certificates should be secured by the execution of a mortgage or deed of trust to a trustee for the benefit of the holders of the certificates. This mortgage or deed of trust should provide that the certificates should be a lien upon the plant acquired and that under no circumstances should they constitute a liability of the city. In the event of default in the payment of the interest or principal upon these public service certificates, the mortgage could be foreclosed and the plant sold, and the purchaser might acquire a twenty year franchise The provision for the possible failure of the city to pay its interest or principal accomplishes two purposes. First, it makes the certificates good security for the money advanced and thus there

would be no difficulty in raising the necessary money, and, second, it absolutely prevents the city sustaining any loss and makes impossible a single dollar's increase in taxes. Thus by resorting to this method of raising money, each plant or public utility pays for itself and in no event can the expense incurred increase the burden of taxation or impair in any respect the city's borrowing capacity. During the session of the Legislature of 1905, The Municipal Ownership League of New York City prepared and had introduced a bill empowering the City of New York to acquire its public utilities upon payment of just compensation for property taken and prescribing a method by which the money necessary to do this could be raised.

Franchises Should Be Forfeited for Non-User.

Where franchises have been granted, but have not been used or operated by the corporations to which they were granted, the duty of the city is clear. It should in all cases institute proceedings to bring about the forfeiture of such franchises. The right of a city to do this is unquestioned and was clearly stated by Attorney-General Mayer in an opinion granting the application of the City of Rochester to bring action for the forfeiture of certain old and unused franchises held by street railways. In his opinion the Attorney-General said:

"The railway company having accepted the consent of the city was bound to act under it. It could not accept franchises given to it and then leave them in abeyance indefinitely, for those franchises were granted not exclusively for the benefit of the railway company but also

in the interest of the public. It cannot be that the city meant to confer these franchises upon the railway company, leaving it optional with the company whether it would build its roads in one, or twenty, or fifty years.

"There is a reciprocal obligation. On the one hand, the railway company was seeking rights which bade fair to become highly valuable, and on the other hand, the city was granting these rights in the expectation of increased transportation facilities for its inhabitants. I think, therefore, that there has been an undoubted abandonment of the franchises granted, and that an action will lie to have such abandoment judicially declared."

A Practical Program.

The public franchise question and the operation of public utilities extends over a broad field and heretofore those who wished to conserve the city's franchise wealth and to promote the public ownership of its public utilities have lacked a definite, clean-cut program. Lack of knowledge as to existing franchise grants, the intricacy of the legal questions involved have all tended to confused and indefinite views upon the subject. The general principles, however, are perfectly clear. New York City ought to keep its franchise wealth. Whenever the law permits it, and as rapidly as the financial conditions of the city make it possible, the city should acquire for public operation the Gas Plant, the Electric Light Plant, and it should construct and operate a comprehensive system of subway railroads. Thus it would afford adequate transportation facilities for the people of the city. When its subway railroads are in successful public operation, it should acquire all other street railroad fran-

chises which it may need. In the meantime it should lease such subways for short terms upon adequate compensation, securing the option to the city to terminate them at any time upon payment of an indemnity. It should insist upon the construction of pipe galleries with all tunnel railroads.

The city should retain all those franchises which it still possesses upon, over or under its streets or other public places until such times as it shall be empowered to own and operate such of them as the public need requires shall be operated.

When franchises expire the city should refuse to renew them, or at least it should consent to their renewal only for very short periods of time and with the understanding that they should be revocable at the option of the city.

Where public service corporations have violated existing laws, whether by continuing in violation of the anti-trust laws of the State or by reason of the non-use or misuse of their franchises or otherwise, proceedings should be at once commenced for the revocation of the charters of such companies and the forfeiture of their franchise privileges. Every corporation operating in the streets should be compelled to show the authority under which it operates, and when its claims are of doubtful validity it should be compelled to submit them to judicial review.

The amounts now due from the public service corporations to the city for taxes or licenses should be paid *at once* and if not paid the property or franchise of such corporation should be sold in the same manner in which the home of the citizen is sold upon his failure to pay his taxes.

All the franchises of the gas companies having expired or being about to expire or subject to forfeiture; and the city having the right to operate a gas plant, it should at once construct and operate a gas plant which should supply not only the city but every consumer within the city's limits.

Legislation should be sought conferring upon the city complete home rule in reference to the acquirement and operation of public gas and electric lighting plants and street railways, whether surface, elevated or subway.

Legislation should be sought abolishing the present Rapid Transit Commission and creating a new commission which should be local and representative in character.

Legislation should be sought making it impossible to give away or part with any public franchise in perpetuity.

The officials of the city should see to it that underground New York is preserved for the use of all the people and should prevent its exploitation in the interests of private corporations.

The argument for municipal ownership and operation of public utilities is unanswerable. The only question is as to how much longer the people of New York City will be foolish enough to allow these utilities to remain in private hands and be operated for private gain. European cities have demonstrated the success of public ownership and operation, and wherever it has been tried in this country, the results have been equally satisfactory. No good reason exists why New York City should not pursue an equally progressive policy. Public opin-

ion in New York City is ready for and will support municipal ownership and operation. When the standard of municipal ownership was raised in Chicago in April, 1905, that city, which in the preceding November had given President Roosevelt a plurality of 108,000 votes, gave to Judge Dunne, the advocate of municipal ownership, a plurality of 24,000.

Municipal ownership is coming and it is just as well to appreciate that fact. It is coming in New York City. All that is needed is for the people of this city to realize that they have the power to secure it. They cannot secure it by showing their servitude to political bosses and rings and by worshiping at the shrine of "party regularity." They must realize that it is an issue greater than any party and a cause that is worth striving for. New York City will get no relief from Albany until its people have shown that they know what they want and are determined to get it. Let them demonstrate this fact and no matter what party rules at Albany all reasonable demands of the city will be complied with. The franchise wealth of the city should and must be preserved for the benefit of the city. Private corporations have refused to give adequate public service; the city must, therefore, assume its proper functions and make its public service equal to the needs of the people. Public values created by all the people have for too long a time been appropriated for private uses. Public values should inure to the benefit of the public. Public values are public property for the same reason that private values which are created by the labor of the individual are private property. The city's franchise wealth is as much public property as is the City Hall, and officials have no more right

to give it away than they have to give away the City Hall. The streets of the City of New York and the right to enjoy privileges in them are veritable gold mines. The wealth which they contain make the wealth that is supposed to be stored away in the mines of the Klondike and South Africa seem insignificant. For years the public service corporations in New York City have stood in the path of progress. Not willing to put these franchises and the opportunities which their ownership secures, to the best use, they have refused either to develop them or to permit the city to develop them. Public necessity now demands that they shall be utilized. The public service corporations, therefore, are determined to secure them and thus to reap the profit which will come from their operation.

With subservient public officials in office for the next four years and with the present Rapid Transit Commission in power and the City of New York tied and hampered at every turn by restrictive laws which the Legislature has prescribed, the public service corporations feel comparatively sure of securing all this vast franchise wealth.

Nothing short of decisive action at the polls in November next can frustrate this plan and preserve this franchise wealth to the people of the city. The power and the opportunity rest entirely with the people. Without the co-operation of the Mayor and Comptroller and the members of the City Board of Estimate and Apportionment, the public service corporations cannot carry out their present scheme to secure the franchises which they desire. With the Mayor and Comptroller and Board of Estimate and Apportionment determined to

protect the people's rights in office, not only can this vast franchise wealth be preserved to the city, but a gas plant can be established and operated for the benefit of every consumer in the city; a municipal, and probably a public electric lighting plant can be established; the giving away of franchises in perpetuity or for long terms by the Rapid Transit Commission can be prevented; new subways can be planned with a view to benefit the public, rather than with a view to benefit the public service corporations; and the disposition of these subway franchises can be limited to short terms and kept within the city's control. If this and nothing more was accomplished, it would be worthy of the effort necessary to achieve this result. But much more could be accomplished. Such an endorsement of municipal ownership and operation as would be involved in the election of a city ticket pledged to this cause, could not and would not be ignored by the next Legislature. The city's right to Home Rule would be recognized: and it never will be recognized until the people of the city demonstrate by independent action that they possess the ability and capacity to govern themselves.

It rests, therefore, entirely with the people whether they will redeem this city from its present position of subjection to the public service corporations, and raise it out of the mire of corruption into which it has sunk as a result of such control. The petty "graft" which was so prevalent in the old days, while not eliminated, no longer meets with the approval of the officials of the city government. But the alliance between the public service corporations and the officials is close and intimate, and out of this alliance flows not petty "graft,"

but the great "graft" that is involved in securing the franchise wealth of the city. In other words, the "petty larceny" of the old days has been succeeded by the "grand larceny" methods of the present.

Questions more important than any which in the history of the city of New York have been submitted to its people are now pending for solution. Either the people will fail to meet the present emergency and the grip of the public service corporations will be made secure upon the city for generations to come, or they will meet it in the spirit of the highest patriotism and progress and the grip of the corporations and the spoilsmen and public plunderers will be broken, and the city will enter upon a period of development which will make possible in the near future the establishment of municipal conditions under which comfortable, healthy and happy life will be possible in every home.

In entering upon this great contest let us not underestimate the difficulties or depreciate the influences opposed to us. The forces opposed to municipal ownership are rich, intelligent, powerful, resourceful, cunning and unscrupulous. Every attempt will be made through the old political parties to see to it that this issue shall not even be presented for consideration. We will hear much about partisanship and many will be the exhortations to respect party regularity. We shall also be invited to fight for "good government" and for many other causes which will be referred to only to divert public attention from the question of municipal ownership and operation of public utilities.

When the issue of municipal ownership and operation shall be squarely presented opponents will resort to mis-

representation. The dictionary of abuse and vilification will be frequently consulted, and those who are determined upon the conservative policy of securing public property for public uses and having the city perform its proper governmental functions will be charged with leading an assault upon property rights. Newspapers owned by the same interests that control the public service corporations will defend the interests of their owners. The defense will not be made by arguments against municipal ownership and operation of public utilities, because there is no good argument which can be urged against this policy. Misrepresentation of facts, vilification and personal abuse of opponents and futile attempts to convince the people that "the time is not ripe," and that different conditions prevail among the people of this city from those which exist where municipal ownership and operation has become a demonstrated success, will constitute the line of defense. All of these arguments in their last analysis rest upon the belief that the people are not fit to enter upon this new field of municipal endeavor. Such an argument presupposes the incapacity of the people to govern themselves and assumes the capacity and honesty of the few to govern the many. Such an argument cannot be endorsed in this city, or in any other part of this country where American principles are still kept alive and cherished.

The difficulties in the way of success afford no ground for discouragement. Those who fight for municipal ownership and operation of public utilities fight for the right. They support a cause which will win. It is inevitable. All the forces of progress are making for it and its triumph is assured.

LB O '08

MUNICIPAL OWNERSHIP

AND OPERATION

OF

PUBLIC UTILITIES

IN

NEW YORK CITY

BY

SAMUEL SEABURY,

One of the Justices of the City Court of the City of New York

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